



Investment guide Kazakhstan



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Wirtschaft für Zentralasien
Представительство Германской
экономики в Центральной Азии

Rödl & Partner

GTAI GERMANY
TRADE & INVEST

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Foreword

LADIES AND GENTLEMEN,

Kazakhstan has increasingly become a focal point for German companies in recent years. There are many reasons for this. The current sanctions against the Russian Federation and the de-risking as part of the German China strategy are certainly contributing to the fact that German companies want to diversify more and more and position themselves more broadly thanks to new markets. Equally important, however, is the remarkable economic dynamism that Kazakhstan continues to demonstrate despite difficult upheavals such as the coronavirus pandemic and the fallout from Russia's war of aggression against Ukraine. This dynamism is based, among many other factors, on a growing and young population as well as broad-based economic and political reforms.

2023 was the record year so far for the German economy in terms of new branches established in Kazakhstan. Dozens of companies took the plunge - with small one-man offices as well as significant investments in production facilities and everything in between. In doing so, companies are entering a still young and dynamically developing market that offers many opportunities and promises, but which also holds stumbling blocks that need to be avoided due to its relative unfamiliarity.

It is therefore all the more important to enter the Kazakh market with expert information and a partner with local experience. In this Investment Guide, you will find the expertise and personal assessments of experts from AHK Central Asia, GTAI and Rödl & Partner

Kazakhstan - three institutions that together have more than 70 years of experience in the Kazakh market. I therefore hope that reading this report will make it easier for you to decide whether and how to enter the market.



Yours
Hovsep Voskanyan

BUSINESS OPPORTUNITIES FOR GERMAN MEDIUM-SIZED COMPANIES

The Kazakh government is interested in increased German involvement and has launched numerous investment programmes to attract international investors to the country. For years, Kazakhstan has rightly been described as Germany's most important partner in the Central Asian region. Kazakhstan is one of the countries in Central Asia that is characterised by political and economic stability and is continuously improving its business and investment climate.

Since the beginning of the Russian war of aggression, Kazakhstan has always remained neutral and has declared several times that it will not support Russia's war efforts. This clear foreign policy stance, which is part of the so-called multi-vector foreign policy with the aim of not only preserving sovereignty, but also finding a balance of interests between neighbouring countries and major powers, above all Russia, China and the United States, has brought Kazakhstan into the focus of international investors since the start of the war. Following their withdrawal from Russia, some international investors are now looking for alternative markets in the Eurasian Economic Union, which includes Kazakhstan. Others see considerable potential in the Kazakh agricultural and agribusiness sector. Due to Russian sanctions, the transport and logistics sector is also gaining in importance. Investments in renewable energies and the manufacturing industry are of particular importance as well.

Kazakhstan is aware of the great opportunity to develop into a new investment hub in Central Asia. The principles of free movement of labour, people, goods and services within the framework of the Eurasian Economic Union, as well as the abundance of almost all raw materials (such as lithium), underline Kazakhstan's new economic role in Central Asia. The positive economic development of the last two years is due not least to Kazakhstan's efforts to prevent the circumvention of sanctions imposed on Russia.

Despite the favourable starting conditions for investments, a market entry must be planned carefully and in an interdisciplinary manner. Our aim was therefore not only to shed light on the legal and tax aspects of investments, but also to publish a practical investment guide based on real experience. In the „Business practice“ section, we at Rödl & Partner have incorporated our 15 years of experience in the Kazakh market and the practical knowledge we have gathered up to that point. Together with the insights of the AHK Central Asia and the GTAI, this investment guide is intended to provide a realistic, realisable guide to support successful investment decisions.

My heartfelt thanks go to all the co-editors and contributors



Michael Quiring
Rödl & Partner

Rödl & Partner



Interview

Kazakhstan in the focus of foreign investors: An interview with the Delegate of German Industry and Commerce in Central Asia, Mr Hovsep Voskanyan.

After the start of the war against Ukraine in 2022, Kazakhstan has a special role to play in Central Asia. In an interview with Mr Michael Quiring (Rödl & Partner), Mr Voskanyan shares his insights on the current challenges and opportunities in Kazakhstan as a new economic hub in Central Asia.



How are German-Kazakh economic relations currently developing in view of the geopolitical upheavals?

German-Kazakh economic relations have been characterised by great dynamism for several years now. In my opinion, this is not primarily due to the global geopolitical upheavals that you have mentioned and which we will discuss later. I think the most important reason is the positive economic development that Kazakhstan itself has undergone, fuelled by the political and economic reforms of recent years, which have sustainably improved the business climate for both local and foreign companies. This, coupled with solid economic growth, a strong appetite for investment and several generic points of contact between the German and Kazakh economies, provides a solid foundation for the current momentum.

This positive trend has intensified since the outbreak of the Russian war of aggression in Ukraine. Logistical routes and supply chains had to be reorganised and Kazakhstan is playing an increasingly important role as a supplier of important raw materials, but also as a logistical hub from East to West and as an alternative production or regional hub location.

You mentioned the dynamics. How does this manifest itself in concrete terms?

In particular, we are seeing significant growth in the foreign trade balance - imports and exports between the two countries. German-Kazakh trade is at a record level. In addition, we at the AHK Central Asia are registering a significant increase in interest from German companies in Kazakhstan both as a supply and sales market and - as I have already mentioned - as an investment location. This manifests itself in a significant increase in the number of German companies entering the market, setting up local subsidiaries and representative offices, and in some investments that have been and are being made despite the tense global situation, even in the COVID years and now.



Is this the much-cited relocation from Russia – i.e. are companies moving their production from Russia to Kazakhstan – or is it direct entry?

Both can be observed. We see some companies relocating their entire production or parts of their presence from Russia to neighbouring countries, including Kazakhstan. But we also see many companies that were not present in Russia with their own legal entity, or are not giving it up, and are active in Kazakhstan independently.

The background to this is clear. In the current tense geopolitical situation, with Russia having collapsed as an economic partner for the unforeseeable future and co-operation with China appearing increasingly risky, German companies are naturally looking for ways to diversify their sources of supply, production and sales markets. And it is precisely under this slogan of „diversification“ that closer cooperation between the German and Kazakh business communities is taking place.

What exactly makes Kazakhstan so interesting for the German economy? You spoke of generic points of contact.

In terms of their economic structure, Kazakhstan and Germany are natural partners because both sides have a lot to offer each other.

Kazakhstan is currently at the very beginning of a comprehensive economic transformation process. The economy, which is still heavily reliant on raw materials and emissions-intensive, is to be diversified and decarbonised in line with the Agenda-2050. Value chains are to be deepened, industrial production expanded and diversified, and exports broadened - both in terms of products and sales markets. All of this with the parallel goal of achieving climate neutrality by 2060.

These are ambitious goals that can only be achieved in cooperation with global market leaders in the greentech and plant engineering sector. German companies are often world market leaders, both as suppliers of plant and machinery and in the field of knowledge transfer, and there is great interest on the Kazakh side in working with the best. There are therefore opportunities for co-operation on a broad front across sectors.



On the other hand, Kazakhstan is richer in raw materials than almost any other country in the world. Of the 118 elements in the periodic table, 90 are found in Kazakhstan in extractable quantities. There are already explored deposits of 70 elements, and 60 elements are already being mined. In addition to traditional raw materials, these also include the so-called raw materials of the energy transition and strategic raw materials that we urgently need in Europe for our digitalisation and decarbonisation plans, such as rare earths, non-ferrous metals and aluminium. These are raw materials for which we are currently still heavily dependent on individual supplier countries that we may not want to be dependent on if we take a closer look.

What other areas of cooperation would you emphasise?

In addition to the raw materials sector, the energy sector is also a major topic. Kazakhstan has the potential to become one of the largest exporters of clean energy - green hydrogen - in the world. There is a large-scale German investment project for this, which is due to start production in 2030. Until then, Kazakhstan is an important supplier of traditional energy sources such as oil, exports of which to Germany reached a new high in 2023.

But there are also many other sectors to mention: Logistics - I have already mentioned this briefly, medical technology, agricultural technology, metallurgy and mining, heavy industry, pharmaceuticals. And this list is not exhaustive, and I fear a detailed description would go beyond the scope of this interview.

Is there anything you would like to pass on to companies that want to get involved in Kazakhstan?

I would advise companies not to be afraid and to seize the opportunity, because Kazakhstan has a lot to offer to those who enter it. At the same time, however, they should also prepare well for their entry into this market, which is often still unknown to companies. This includes entering the market with an experienced partner. This can be the AHK, but also other local German companies that combine local market knowledge with global experience. If you approach market entry in this way, the probability of success is very high in my opinion.

Thank you very much for the informative interview and for giving the reader an insight into trade relations between the Federal Republic of Germany and the Republic of Kazakhstan.



Economy



Economic structure

Kazakhstan is dependent on income from the export of oil and metals. The stronger expansion of the manufacturing industry is developing only slowly.

With an area of 2.7 million square kilometres, Kazakhstan is the ninth-largest country in the world. Almost 20 million people currently live in the Central Asian republic. Its most important economic partners are its neighbours Russia and China. The country's wealth of raw materials is just as important to it as its geographical location as a hub for the flow of goods between East and West. The effects of the war in Ukraine have so far remained manageable. However, the close ties with Russia harbour certain risks.

KEY ECONOMIC DATA

Indicator	2022 ¹⁾	2023 ²⁾	2024 ²⁾	Comparative data for Germany 2022 ¹⁾
Gross domestic product (GDP; nominal, billion US dollars (US\$))	209	227	240	4.063
GDP per capita (US\$)	10.769	11.491	12.200	48.459
Population (million)	19,5 ³⁾	19,8 ³⁾	20,0 ³⁾	84,3 ⁴⁾
Exchange rate (annual average, 1 US\$ = ...Tenge)	460,48	483,9	491,6	-

1) Preliminary 2) Forecasts 3) Beginning of the year 4) End of the year

Sources: Qazstat (Office of National Statistics) 2023, Central Bank of Kazakhstan 2023, The Economist Intelligence Unit (EIU) 2023, Destatis 2023, European Central Bank 2023

Detailed information on the economy can be found in the GTAI Economic Data Compact.

SECTORS: THE GOAL IS LESS DEPENDENCE ON RAW MATERIALS

The raw materials sector dominates Kazakhstan's economy. Including all attributable services in the secondary and tertiary sectors, oil production alone accounts for around one fifth of gross value added (share in 2021: 19.4 per cent).

In addition to financing current expenditure, a large proportion of income from the oil sector is also channelled into the Kazakh National Fund. This mainly serves as a reserve for future generations. In times of crisis, it has also been used for special expenses in the past.

For example, the extraordinary allocations from the National Fund prevented a more severe economic slump during the coronavirus years. However, the fund is not a panacea due to its relatively modest resources in international comparison. As a result, economic downturns due to low world market prices for raw materials and the country's high dependence on raw materials can only be avoided to a limited extent. A stronger diversification of the economy has therefore been on the agenda for some time, but the hoped-for breakthrough has yet to materialise.

The expansion of the manufacturing industry is intended to give the country more economic pillars. The aim is to ensure that more of the goods produced in this way not only supply the domestic market, but are also exported.

Other promising sectors include agriculture and transport. There are also financial services with the Astana International Financial Centre as a financial hub for the Central Asian region.

ECONOMIC IMPORTANCE OF KEY ECONOMIC SECTORS

Sectors	Share of GDP ¹⁾	Share of employees ²⁾
Agriculture, forestry and fishing	5,3	11,3
Mining (including oil and gas extraction)	15,9	2,2
Manufacturing industry	13,5	6,0
Energy supply	1,5	0,9
Water supply, wastewater and waste disposal	0,3	0,5
Building trade	5,2	6,7
services	49,7	72,4
Net taxes on goods	8,6	-

1) 1st to 3rd quarter 2022 2) 3rd quarter 2022

Source: Qazstat 2023

MANUFACTURING INDUSTRY: FOCUS ON METAL PRODUCTS AND FOODSTUFFS

The manufacturing industry is dominated by the primary and further processing of raw materials. While the extracted oil is mainly exported in its raw state, other raw materials mined in the country, such as metallic ores, are often first processed and refined locally.

With a contribution to production value of more than 40 per cent (2022: 43.6 per cent), the metal industry is by far the most important branch of manufacturing. Non-ferrous metals account for two thirds of production and iron and steel for one third.

Food and beverage production accounts for just under a fifth of manufacturing output. Kazakhstan is aiming to significantly expand capacity in meat and milk processing in particular.

SERVICES: TRADE AND TRANSPORT SET THE TONE

With a contribution to GDP of almost one fifth, trade is the most important part of the service sector. As the population's income is expected to continue to rise, this sector is likely to further consolidate its position in the future.

This is followed by transport, which recently accounted for just under 10 per cent of the GDP. The sector is considered to have a particularly promising future due to Kazakhstan's function as one of the central trading hubs between Europe and Asia. The expansion of road and rail transport capacities is underway. Similar to other countries in Central Asia, Kazakhstan also has significant potential for tourism. However, development in this area has been slow so far.

MINING: FOCUS ON EXPORT-ORIENTATED OIL PRODUCTION

The main focus of mining activities is oil production. Together with natural gas, oil has accounted for well over 50 per cent of total exports in recent years. Almost 80 per cent of the oil produced in the country is exported every year. The three largest individual projects by far, Tengiz, Kashagan and Karachaganak, together account for almost two thirds of the total production. Thanks to the expansion projects being pursued there, oil production is expected to increase to more than 100 million tonnes per year by 2025.

The mining of coal and numerous ores also plays an important role. While Kazakhstan largely consumes the coal itself, the country exports the ores, most of which contain metals. Large quantities of the mined ores are first processed locally and then supplied to foreign customers as concentrates and metals. The most important products include lead, chromium, iron and steel, gold, copper, manganese and zinc. Kazakhstan is the world's leading producer and exporter of uranium.

REGIONS: IN ADDITION TO THE ATYRAU OIL REGION, THE CITY OF ALMATY DOMINATES THE ECONOMIC ACTIVITY

The country's largest city, Almaty, is the economic centre with a focus on trade and finance. The capital Astana is catching up thanks to targeted development and settlement measures. As the most important oil-producing region, the Atyrau region has the highest GDP per capita in the country.

In addition to the Atyrau, Mangystau and West Kazakhstan regions, which are important for oil and gas production, there are other mining clusters. For the mining of metallic ores, these are the regions of East Kazakhstan, Aktobe, Pavlodar, Turkestan and Kostanai. The ores are often also processed and treated there.

Coal is primarily mined in the Karaganda and Pavlodar regions, which also makes them important electricity suppliers. The centres of oil processing are the locations of the three major refineries in the country: the city of Shymkent and the Atyrau and Pavlodar regions.

The main centres of food production are the city of Almaty and the Almaty and Kostanai regions. As a relatively new branch of industry, vehicle manufacturing has large car assembly plants in the Kostanai region and in the city of Almaty.



REGIONAL KEY DATA 2022

Regional authority	Share of GDP (in %)	BIP pro Kopf (in USD) ¹⁾	Population (in millions) ²⁾
City of Almaty	17,3	11.668	2,16
Atyrau region	13,8	28.729	0,69
City of Astana	9,4	10.192	1,35
Karaganda region	7,3	9.157	1,13
Mangystau region	4,9	9.289	0,77
Aktobe region	4,6	7.143	0,93
West Kazakhstan region	4,4	9.177	0,69
East Kazakhstan region	4,1	8.082	0,73
Kostanai region	4,0	6.784	0,82
Pavlodar region	3,9	7.438	0,75
Almaty region	3,9	3.729	1,51
Turkestan region	3,4	2.329	2,11
City of Shymkent	3,2	3.929	1,19
Akmola region	3,2	5.863	0,79
Kysylorda region	2,5	4.375	0,83
Shambyl region	2,5	3.000	1,22
Abai region	2,2	5.180	0,61
North Kazakhstan region	2,2	5.839	0,53
Ulytau region	1,8	11.570	0,22
Schetisu region	1,4	2.858	0,70

1) Exchange rate of the Kazakh central bank for 2022: US\$ 1 = 460.48 tenge, 1st to 3rd quarter of 2022;

2) Status: 1 January 2023

Source: Qazstat 2023



REGIONAL DISTRIBUTION OF IMPORTANT ECONOMIC SECTORS ^{*)}

Wirtschaftszweig	Gebietskörperschaft
Mining (with oil / gas extraction)	Atyrau (41 %), Mangystau (16 %), West Kazakhstan (14 %), Aktobe (7 %)
Agriculture	Akmola (11 %), North Kazakhstan (13 %), Turkestan (12 %), Kostanai (10 %), Almaty (Gebiet; 8 %)
Manufacturing industry	Karaganda (19 %), East Kazakhstan (9 %), Pavlodar (9 %), Almaty (region; 9 %), Kostanai (6 %), Almaty (city; 6 %)
Building trade	Atyrau (19 %), Astana (10 %), Almaty (city; 8 %)
Power generation	Pavlodar (17 %), Karaganda (13 %), Almaty (city; 8 %); Aktobe (7 %), East Kazakhstan (6 %)
Trade	Almaty (Stadt; 34 %), Astana (16 %), Atyrau (11 %)
Transport	Almaty (city; 14 %), Astana (10 %), Atyrau (10 %), Turkestan (6 %); Schambyl (6 %), Almaty (Gebiet; 6 %)
Financial and insurance services	Almaty (city; 60 %), Astana (15 %)

^{*)} Figures in brackets: Share of the region in the gross value added of the respective sector

Sources: Qazstat 2023; calculations by Germany Trade & Invest 2023

Economic outlook

Kazakhstan is enjoying strong export earnings. The effects of the war in Ukraine are still manageable. However, the close ties with Russia bear certain risks.

ECONOMIC DEVELOPMENT: GROWTH OF OVER 3 PER CENT POSSIBLE

The Kazakh economy continued its upswing in 2022. After a dip during the coronavirus pandemic, the country benefited in particular from the sharp rise in the price of crude oil in the meantime. Together with a fairly robust trend in consumption and investment, this led to a real increase in GDP of 3.5 per cent.

According to international observers, the positive trend is likely to continue. The International Monetary Fund (IMF), for example, expects a real GDP growth of 4.3 per cent in 2023. Other institutions such as the World Bank and the Economist Intelligence Unit (EIU) predict a growth of 3.5 and 3.6 per cent.

International institutions had predicted a significant slowdown in growth following the Russian invasion of Ukraine. The main reason for this is Kazakhstan's political and economic proximity to Russia. The originally quite moderate growth forecasts were revised upwards, in some cases significantly.

The gradual loss of economic momentum over the course of 2022 made it clear that not everything was running smoothly in Kazakhstan's economy in 2022. After a peak of 4.6 percent in the middle of the year compared to the previous year, the growth rate fell to just 2.5 percent by the autumn. Thanks to a year-end sprint driven primarily by private consumption, the pace subsequently picked up again.

In addition to technical interruptions in oil production, the temporary weakness was undoubtedly due to the effects of the war in Ukraine. The supply chains for many primary and end products that used to reach the Kazakh market via Russia have been permanently disrupted. This not only reflects the sanctions against Russia, but also the withdrawal of numerous international producers from business with Russia. However, the slowing effects are likely to subside over time.

ECONOMIC DEVELOPMENT 2022 TO 2024 (REAL YEAR-ON-YEAR CHANGE IN PER CENT)

	2022 ¹⁾	2023 ²⁾	2024 ²⁾
GDP	3,5	3,6	3,8
Current account balance (in % of GDP)	-2,9	2,1	0,4
Gross fixed capital formation	3,0	3,5	6,0
Private consumption	3,3	2,1	-1,1

1) provisional 2) forecasts

Sources: Government of Kazakhstan 2023; EIU 2023

INDICATOR	2022 ¹⁾	2023 ²⁾	2024 ²⁾
Gross domestic product (GDP; nominal, billion US dollars (US\$))	209	227	240
GDP per capita (US\$)	10.769	11.491	12.200
Population (million)	19,5 ³⁾	19,8 ³⁾	20,0 ³⁾
Exchange rate (annual average, 1 US\$ = ... Tenge)	460,48	483,9	491,6

1) preliminary 2) forecasts 3) beginning of the year

Sources: Qazstat (Office of National Statistics) 2023, Central Bank of Kazakhstan 2023, The Economist Intelligence Unit (EIU) 2023, Destatis 2023, European Central Bank 2023

INVESTMENTS: BOOST FROM HIGHER PROCEEDS FROM COMMODITY TRANSACTIONS

Gross fixed capital investments are developing more robustly than expected. For 2022, the EIU predicted an increase of 3.0 per cent in real terms, while for 2023 it expects an increase of 3.5 per cent.

In particular, the significant rise in commodity prices revitalised investment activity. The higher income from sales has noticeably increased the financial scope for investment for the state and numerous companies.

In addition to numerous domestic companies, foreign investors are also currently contributing to growth. They had already significantly increased their involvement in 2022 despite the January unrest. In the period from January to September 2022, foreign direct investment worth almost US\$ 6.8 billion were allocated in Kazakhstan. This equated to an increase of over 80 per cent compared to the same period in the previous year.

The increase in foreign activities is also indirectly related to the war in Ukraine. Numerous international companies have turned their backs on the Russian market and moved to Kazakhstan.

Information on current donor-funded projects can be found on the **GTAI country page**, under „Tenders“ and „Development projects“.

CONSUMPTION: HIGH WAGE GROWTH MORE THAN COMPENSATES FOR INFLATION

Despite the significant double-digit inflation rate, private consumption continued to grow. According to the EIU, it increased by 3.1 per cent in real terms in 2022. However, with an increase of 2.4 per cent in real terms, the forecast for 2023 is slightly more subdued.

Significant nominal income growth initially favoured this development significantly. Until autumn 2022, they were higher than the rise in prices (inflation 2022: 20.3 per cent on an annual basis). After the first three quarters of 2022, average wages were still 9.4 per cent higher in real terms than a year earlier. However, according to preliminary data in the 4th quarter of 2022 real wages fell in direct comparison to the same month of the previous year.

Pension growth has not kept pace with price increases for some time now. Many people of retirement age have already been affected by real income losses since 2021.

SWOT analysis

A COURSE TOWARDS GREATER ECONOMIC DIVERSITY GENERATES OPPORTUNITIES

Kazakhstan is considered the most efficient economy in Central Asia and is Germany’s most important trading partner in the region. With a population of just under 20 million, the country is rich in natural resources. There are particularly large deposits of oil. Numerous base metals and precious metals are also mined on a large scale. The agricultural sector has greater potential, particularly in the grain, livestock, fruit and vegetable segments.

So far, however, the Central Asian republic has often fallen short of its potential. The majority of economic sectors have recovered from losses during the coronavirus crisis and are growing. Thanks to rising oil prices, the state has earned more than originally expected. However, Russia’s war of aggression against Ukraine is having a dampening effect. This is because Kazakhstan’s economy is closely intertwined with the sanctioned Russia. As a result, the upturn in Kazakhstan has recently lost some of its pace.

STRENGTHS	WEAKNESSES
Great wealth of raw materials	Partly strongly fluctuating world market prices, dependence on raw material exports
Enlarged internal market through the Eurasian Economic Union (EAEU)	Future role of the EAEU unclear due to far-reaching sanctions against Russia and Belarus because of the war in Ukraine
Low national debt and fairly high foreign exchange reserves	Volatile exchange rate to leading currencies
Bridging the gap between Asia and Europe	Long distances, high transport costs
OPPORTUNITIES	THREATS
Significant need for modernisation and trend towards economic diversification	Lack of legal certainty, bureaucracy, corruption
Expansion of transport routes between Europe and Asia (New Silk Road)	Strong dependence on developments in Russia and China
Good conditions for large-scale wind and solar parks and green hydrogen	Shortage of skilled labour in technology-oriented sectors
Political reform agenda also aims to create a more attractive business and investment climate	Large income gap and few prospects in rural regions jeopardise social peace

ABUNDANCE OF RAW MATERIALS – A BLESSING AND A CURSE

On the one hand, Kazakhstan can score points with its wealth of natural resources. The country ranks among the top 10 internationally in terms of commodity deposits and production in several categories of raw materials, in uranium it is even the world leader. The most important economic factor is oil production. This generates almost 60 per cent of the country's export earnings. With the remaining resources, the raw materials sector accounts for around 85 per cent of exports. In addition to the oil industry, it also includes companies that:

- Extract natural gas,
- Extract a wide range of ores,
- Produce metals and mainly semi-finished products from the extracted ores.

On the other hand, the dominance of the commodities sector also makes the country particularly vulnerable to economic crises. The most recent example is the Covid-19 pandemic: many commodities fell sharply in price during the turbulent first half of 2020. As a result, Kazakhstan's export revenues fell noticeably.

GOVERNMENT INVESTMENT PROGRAMMES PROVIDE IMPETUS FOR LOCAL PRODUCTION

In order to reduce the significant dependence on raw materials, the country has been striving for increased industrialisation for some time now. The focus is on intensified processing of self-produced primary goods, which the state is supporting with numerous measures. To this end, for example, long-term development programmes worth billions have been launched in key areas. In addition, there are cross-sectoral concepts to adjust development levels at regional level.

Kazakhstan has a moderate level of public debt and, in addition to significant foreign exchange reserves, a national reserve fund that is primarily fuelled by oil revenues. This special reserve, which totalled almost USD 58 billion at the end of January 2023, provides financial leeway. In the past, the country has used it to respond to crises in a targeted manner.

EXPANSION OF TRANSPORT ROUTES AGAINST THE BACKDROP OF THE WAR IN UKRAINE

However, the government also regularly draws on the reserve fund in non-crisis times. Among other things, it wants to use the money to expand and modernise transport routes. Its central location in Eurasia makes Kazakhstan an important hub for the overland transport of goods between China, Europe and the Middle East.

The war in Ukraine is creating new challenges. International freight forwarders are increasingly turning away from the northern route via Russia and Belarus, which is currently still the main route. In order to shift the flow of goods, the so-called Middle Corridor- leading westwards via the Caspian Sea and the South Caucasus- is coming more into focus than before.

However, due to a lack of capacity, the central corridor is not yet an alternative to the northern route. At best, this can only be expected in the medium to long term. However, the expansion is already high on the agenda. Brussels is also considering supporting the project as part of **Global Gateway**, the new EU strategy for extensive investment in global infrastructure.

GREEN ELECTRICITY AND HYDROGEN AS A MODEL FOR THE FUTURE

In order to broaden its economy, Kazakhstan is also focusing on more electricity from renewable energy sources. The production of green hydrogen is closely linked to this. One pioneer is the German-Swedish project developer Svevind, which is pushing ahead with the Hyrasia One megaproject in the vast steppe regions in the west of the country. The project comprises several large-scale solar plants and wind farms, the electricity from which will be used to produce large quantities of green hydrogen.

GOVERNMENT WANTS TO IMPROVE BUSINESS CLIMATE

Kazakhstan has attracted a lot of foreign direct investment in recent years, mainly into the raw materials sector and the metal industry. The business and investment environment is being gradually improved in order to increase foreign involvement in the manufacturing industry. Kazakhstan is now a member of the World Trade Organisation (WTO), has simplified its visa regulations for numerous countries and has established the Astana International Financial Centre as a financial hub for the Central Asia region.

According to international studies, however, there is a need to catch up when it comes to the hesitant reduction of state influence on the economy. Other weak points include a lack of legal certainty, too much bureaucracy and insufficient transparency in the awarding of contracts.



Foreign trade and Germany's competitive position

GERMAN PLAYERS AMONG THE FRONT RUNNERS

Kazakhstan has particularly strong economic ties with Russia. China has recently caught up significantly. Germany is one of the top 5 main supplier countries. Kazakhstan is primarily associated with rich deposits of raw materials. Germany also benefits from this, as it purchases large quantities of crude oil from the country.

Other important assets include its geographical location, where Kazakhstan plays a major role in the expansion of transport corridors between Asia and Europe. The membership in the Eurasian Economic Union (EAEU), with its large domestic market, has also been seen as a locational advantage in the past. However, the Ukraine conflict raises the question of whether Kazakhstan will be able to draw benefits from this in the future.

Germany is an important trading partner. As an investor, it has played a subordinate role to date, as the raw materials sector dominates foreign investment, where German players have hardly made an appearance so far.

INFOBOX

According to preliminary data from Qazstat, Kazakhstan imported goods worth US\$ 50.0 billion in 2022, 4.5 per cent of which came from Germany. According to Destatis, the country ranked 52nd among Germany's most important sales markets.

Kazakhstan exported goods worth US\$ 84.4 billion in 2022, 0.6 per cent of which went to Germany according to Qazstat. In fact, the corresponding share is higher. This is due to the fact that the Qazstat data on German purchases from Kazakhstan differ greatly from the corresponding Destatis data.

While Kazakh statistics put exports to Germany at just US\$ 533 million in 2022, preliminary Destatis data put them several times higher at US\$ 7.3 billion - 37th place among the most important German supply markets. The discrepancy is due to oil exports being recorded differently in Kazakhstan, which are largely attributed to other countries but are actually also destined for German end customers.

According to the AHK Central Asia, around 300 German companies were based in Kazakhstan in 2022.

LARGE NEIGHBOURING COUNTRIES ARE THE MOST IMPORTANT TRADING PARTNERS

Supported by fairly steady economic growth, imports have increased in Kazakhstan since 2000. However, there have also been setbacks, such as during the global financial crisis in 2009. The import result in 2022 marked a new historical record.

China, Turkey and South Korea are gaining ground as the main trading partners. The Middle Kingdom is now hot on the heels of Russia, which remains Kazakhstan's most important trading partner. In contrast, the EU's contribution to the country's trade in goods had crumbled somewhat for several years before improving again in 2022. Germany's market share, on the other hand, continued to decline slightly.

MOST IMPORTANT SUPPLIERS (SHARE IN PER CENT) ^{*)}					
Year	Russia	China	Germany	USA	South Korea
2001	43,8	2,7	7,7	5,5	1,8
2002	38,7	4,8	8,9	7,0	1,7
2003	39,0	6,2	8,7	5,6	1,4
2004	37,6	5,9	8,2	4,4	1,9
2005	38,0	7,2	7,5	6,9	1,5
2006	38,3	8,1	7,6	4,7	1,5
2007	35,4	10,7	7,9	5,0	1,9
2008	36,4	12,1	6,8	5,1	1,1
2009	31,3	12,6	7,2	4,9	1,3
2010	22,8	16,5	7,6	5,5	2,2
2011	42,8	13,2	5,5	4,5	1,6
2012	38,4	16,8	5,1	4,8	2,1
2013	36,8	17,1	5,0	4,4	2,6
2014	33,4	17,8	5,6	4,8	2,6
2015	34,4	16,6	6,5	4,9	2,0
2016	36,3	14,6	5,7	5,1	1,8
2017	39,6	15,9	5,0	4,2	1,9
2018	39,3	16,0	4,9	3,8	2,7
2019	36,7	17,1	3,9	3,5	8,9
2020	34,9	16,7	4,7	3,0	12,8
2021	42,5	19,9	4,4	3,3	1,8
2022	35,5	22,0	4,2	3,5	3,2

^{*)} Share of total imports

Sources: Qazstat 2023 (preliminary data for 2022), UN Comtrade 2023

MACHINERY, CARS AND CHEMICAL PRODUCTS DETERMINE GERMAN DELIVERIES

Germany has been one of the most important suppliers of many goods on the Kazakh market for years. „Made in Germany“ enjoys a good reputation. Competition has recently intensified in many segments.

Competitors often come from Russia and China, which benefit from traditionally close relationships and / or geographical proximity. Players from these countries have also caught up in terms of technology. South Korea has recently conquered larger market shares for machines and systems.

GERMAN EXPORT GOODS 2022 (PER CENT OF TOTAL EXPORTS) ¹⁾

Category	Share
Machines ²⁾	23,5
Motor vehicles and parts ³⁾	18,9
Chemical products ⁴⁾	17,4
Other vehicles ⁵⁾	9,5
Measurement and control technology ⁶⁾	4,5
Other	26,1

1) Share of total German exports to Kazakhstan; 2) SITC groups 71 to 74; 3) SITC group 78; 4) SITC groups 51 to 59; 5) SITC group 79; 6) SITC group 87

Source: Destatis 2023 (preliminary data)



MAIN SUPPLIERS OF IMPORTANT PRODUCTS (SHARE IN PER CENT) ¹⁾

Rank	Product	2000	2010	2020
	Machines ²⁾			
1	South Korea	--	1,9	43,9
2	Russia	55,1	9,1	13,3
3	China	0,0	20,1	10,9
4	Germany	7,8	11,1	6,6
	Motor vehicles and parts ³⁾			
1	Russia	32,8	10,7	39,0
2	China	0,6	17,6	15,1
3	Uzbekistan	1,3	2,1	8,1
4	Japan	0,2	26,2	6,5
5	South Korea	0,4	4,6	6,4
6	Czech Republic	0,2	0,9	4,9
7	Germany	2,3	11,1	4,2
	Chemical products ⁴⁾			
1	Russia	69,9	16,1	34,9
2	China	2,9	10,4	11,5
3	Germany	3,8	11,2	7,7
	Other vehicles ⁵⁾			
1	Russia	97,6	10,3	26,2
2	Germany	--	12,0	25,1
3	France	--	0,3	18,6

1) Shares of the largest supplier nations for Germany's most important export products to Kazakhstan; 2) SITC groups 71 to 74; 3) SITC group 78;

4) SITC groups 51 to 59; 5) SITC group 79

Source: UN Comtrade 2023 (current data for Kazakhstan for 2020)

INDIVIDUAL AREAS WITH POTENTIAL FOR SOURCING

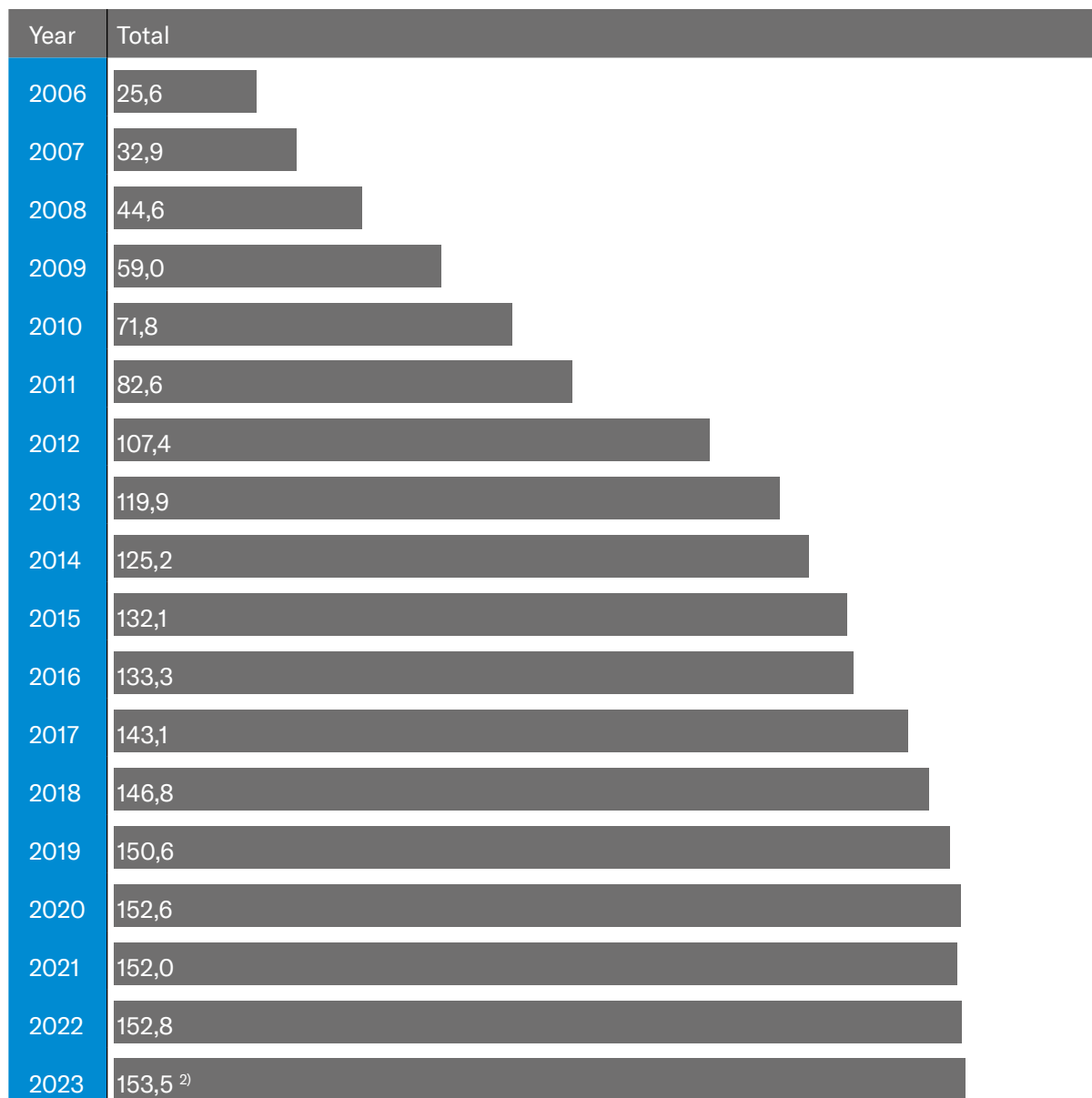
Kazakhstan's diverse mineral resources make the country an important procurement market for numerous raw materials in the international arena. In addition to extensive crude oil reserves, major deposits of a wide range of metals are also known, including rare earths, for example. A raw materials partnership has existed between Germany and Kazakhstan since 2012. Agriculture also offers good opportunities for targeted sourcing. Its potential is to be increasingly utilised in order to export more agricultural goods.

The conditions are also favourable for generating green electricity from solar and wind power. The energy generated there could also be used to produce larger quantities of green hydrogen for the European markets.

FOREIGN DIRECT INVESTMENT: CLEAR FOCUS ON THE OIL SECTOR

Foreign players have now invested more than US\$ 150 billion in Kazakhstan in the form of direct investments. Net inflows of foreign capital have declined somewhat recently, but are expected to increase significantly again in the coming years. To this end, a new government investment strategy was presented in mid-2022, the implementation of which is expected to increase the annual inflow of foreign direct investment to US\$ 25.5 billion by 2026.

STOCK OF FOREIGN DIRECT INVESTMENT TO KAZAKHSTAN (IN BILLION US\$)¹⁾



1) t the beginning of each yearn 2) provisional

Source: Central Bank of Kazakhstan 2023

More than three quarters of all foreign direct investments in Kazakhstan have so far been channelled into oil and gas extraction and other mining activities. In the manufacturing industry, which has attracted more and more investment in recent years, the metallurgical sector continues to be the main focus.

DISTRIBUTION OF FOREIGN DIRECT INVESTMENT IN KAZAKHSTAN BY MAJOR ECONOMIC SECTOR (IN BILLIONS OF US\$) *)

Industry sector	Total
Extraction of crude oil / natural gas	111,1
Trade; maintenance / repair of motor vehicles	5,9
Metal production / processing	5,4
Other mining	5,3
Geological exploration activities	4,4
Financial services	4,2
Transport by pipeline	3,7
Building trade	1,3
Energy supply	1,1
Food / beverages	1,0
Real estate / housing	0,9
Rubber / plastic goods	0,9
Information / communication	0,9
Chemical products	0,8

*) Status: 1 October 2022

Source: Central Bank of Kazakhstan 2023

In terms of foreign direct investors in Kazakhstan, those countries that are active in the oil and gas sector are at the forefront. In the case of the front-runner, the Netherlands, internationally active companies often operate via holding structures based in the Netherlands, which is also the case for investments in Kazakhstan.



Important sectors at a glance



Energy

RENEWABLE ENERGIES ARE GRADUALLY REPLACING COAL AS THE MAIN SUPPLIER OF ELECTRICITY

There is a great need for investment in the Kazakh energy sector. The measures that the sector needs to take to achieve climate neutrality by 2060 are particularly significant. According to the country's decarbonisation strategy, investments of around 305 billion US dollars (US\$) are required in the long term. This corresponds to around half of the financing required for all planned climate protection measures.

Kazakhstan currently generates around 70 per cent of its electricity from coal. By 2030, its contribution is expected to decline to 40 per cent. The switch to alternative energy sources has already begun. The focus is on renewable energy sources such as solar and wind.

Natural gas is also to be utilised more frequently. Kazakhstan also wants to utilise nuclear energy in the future. Which international technology provider will be chosen is likely to be decided in 2023. The first Kazakh nuclear power plant could be connected to the grid around 2035.

According to the climate protection strategy, green electricity should account for 6 per cent of total production in Kazakhstan by 2025. At the end of 2022, the corresponding contribution was 4.5 per cent. By 2030, 15 per cent of electricity production is to come from renewable sources, with a target of 50 per cent by 2050.

In 2022, a total of 378 megawatts of new renewable energy capacity was added. The total amount of green electricity produced across the country rose to 2,388 megawatts. Photovoltaics (share: 48 per cent) and wind power (40 per cent) dominated the picture at the end of 2022.

For investors and project developers, an auction model offers starting points for commitments. The auctions have noticeably reduced the feed-in tariffs for wind power and photovoltaics.





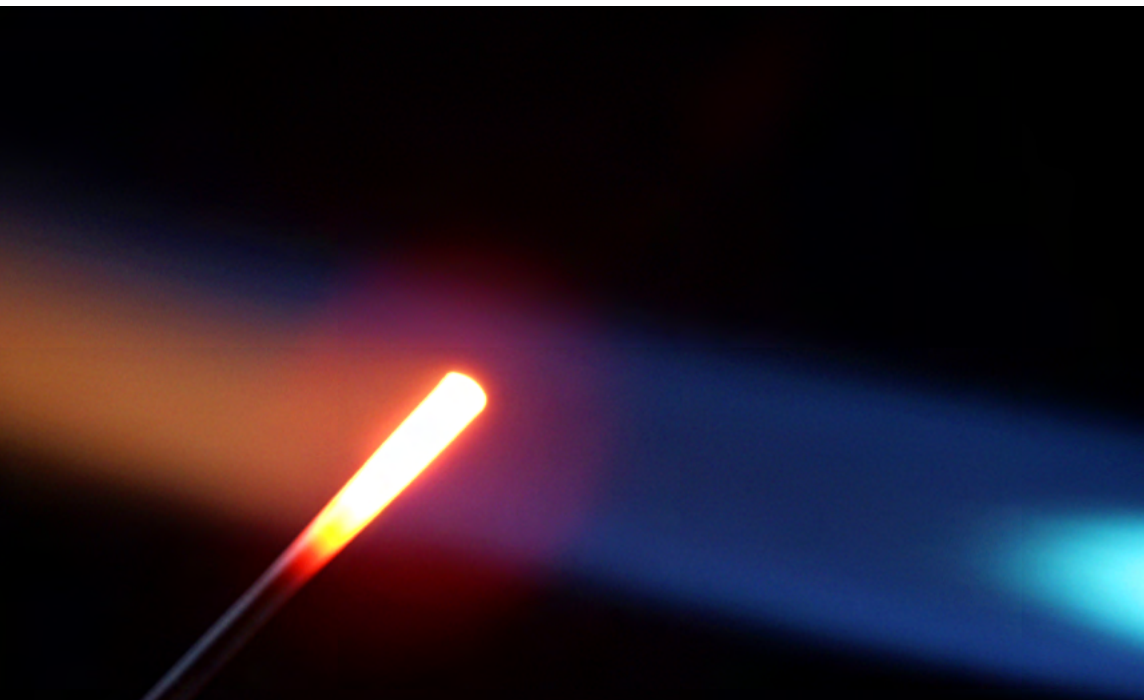
NATURAL GAS AS AN ENERGY SOURCE IS BECOMING MORE POPULAR AS AN INTERIM SOLUTION

The construction of several combined-cycle power plants with gas and steam turbines (CCGTs for short) is also on the agenda. This technology is considered an important interim solution in Kazakhstan for replacing coal as the main source of energy. The CCGT power plants are also needed as a grid reserve for the growing number of wind and solar power plants.

In the Almaty agglomeration alone, three large power plants are to be converted to CCGT technology. The European Bank for Reconstruction and Development (EBRD) has already approved a loan for the large-scale cogeneration plant TEZ-2.

The two regions of Kysylorda and Turkestan in southern Kazakhstan will also receive two modern CCGT power plants. They could be connected to the grid in 2025 and 2026 and will primarily serve as a grid reserve. The investors for the projects were determined via auctions.

In addition to the creation of grid reserves, Kazakhstan is also driving forward the targeted modernisation and / or expansion of existing conventional power plants. To encourage their operators to invest, the state is offering indirect subsidies in the form of price concessions. To this end, individual wholesale prices are negotiated for a longer period of time, which are higher than the centrally regulated tariff.



Mining

KAZAKHSTAN IS ONE OF THE WORLD'S LEADING COUNTRIES IN TERMS OF RAW MATERIAL WEALTH

Almost all of the elements in the periodic table can be found in the world's largest landlocked country. For some of the raw materials, the country is even among the international leaders in terms of extraction and / or exports.

The extraction of raw materials is the most important economic and industrial sector in Kazakhstan. The oil and gas industry accounts for the majority of output (around 40 per cent of total manufacturing output in 2022). In contrast, the share of ore and coal mining was more modest with a contribution of just under 10 per cent.

The three largest individual projects in the oil sector – Tengiz, Kashagan and Karachaganak – are located in the west of the country. Each located on or in the Caspian Sea, together they account for almost two thirds of Kazakhstan's oil production. Major expansion projects are currently underway at all three deposits, which should increase nationwide oil production to more than 100 million tonnes per year by 2025. Kazakhstan exports almost 80 per cent of the oil it produces.

GERMANY PURCHASES MORE OIL FROM KAZAKHSTAN

Increasing quantities of this are also reaching Germany. In recent years, Kazakhstan has risen to become the third most important supplier to the German market. According to preliminary figures from Destatis, a good 8.2 million tonnes of oil were sourced from Kazakhstan in 2022. The corresponding share of total imports was 9.5 per cent. In 2022, only Russia and the USA exported more oil to Germany.

The mining of numerous ores and coal also plays an important role. While Kazakhstan largely consumes the coal itself, the country exports the ores, most of which contain metals. Large quantities of the mined ores are first prepared and processed locally and then supplied to foreign customers as concentrates and metals. The most important products include lead, chromium, iron and steel, gold, copper, manganese and zinc. Kazakhstan is the world's leading producer and exporter of uranium.

Various non-ferrous metals take centre stage in the extraction of metallic ores. In 2022, they accounted for around 70 per cent of all revenue in metal ore mining. The most important products include lead, chromium, iron and steel, gold, copper, manganese and zinc. Kazakhstan ranks first worldwide in the mining and export of uranium.



Construction / transport infrastructure

OPPORTUNITIES FOR FOREIGN PLAYERS, ESPECIALLY IN THE SUPPLY BUSINESS

The construction industry has long been considered an important growth driver of the Kazakh economy. This was also the case in 2022: while GDP grew by 3.2 per cent, the construction sector grew by 9.4 per cent according to preliminary figures from Qazstat. There is not only high demand for residential space, but increasingly for commercial and industrial buildings as well. The construction industry is also benefiting from targeted government support measures.

These primarily concern the residential construction sector. Here, several state-subsidised mortgage programmes with fixed interest rates, manageable amounts of equity and long terms are providing economic stimulus. As domestic companies dominate as project sponsors in the residential construction sector, this construction sector is particularly relevant for German and other foreign companies in the supply business.

In addition to construction machinery, there is also demand for high-quality tools, fittings, construction chemicals and specialised building materials. However, competition is strong now- in particular from China.

TRANSPORT INFRASTRUCTURE REMAINS IN FOCUS

Infrastructure is another key area of construction activity in the country. Its expansion includes roads, railway lines, ports, airports and logistics centres in equal measure. Several of these projects are supported by international multilateral and bilateral donors.

Thanks to its location in the heart of Eurasia, Kazakhstan is considered a central hub for overland freight transport between East Asia, Europe and the Middle East. Accordingly, the expansion of transport infrastructure in Kazakhstan is focusing on multimodal transport corridors.

The biggest advantage of land transport over the more cost-effective sea transport is the time saved. In recent years, Kazakhstan has already been able to significantly increase transit traffic across its territory. More and more companies are using the overland route for transport between their plants and to customers.

As a result of the war in Ukraine, freight forwarders are increasingly focusing on the so-called Middle Corridor. Bypassing Russia and Belarus, it leads across the Caspian Sea and through the countries of the South Caucasus and Turkey to Europe.

BREAKTHROUGH FOR ENERGY-EFFICIENT CONSTRUCTION IS STILL PENDING

As far as energy-efficient construction solutions are concerned, their acceptance in Kazakhstan is still limited. Green, environmentally friendly construction recently accounted for just over 1 per cent of total construction work. In the long term, however, there is great potential for the use of energy-efficient solutions in the country.

In addition to new construction, existing buildings with a very high need for modernisation are also in demand. One of the focal points here is thermal insulation, which needs to be significantly improved. Almost two thirds of the approximately 2.4 million buildings in Kazakhstan that were built 25 years ago or earlier have little or no thermal insulation.

The average energy demand in the building sector is not only well above the European level, but also above the consumption in neighbouring Russia - where climatic conditions are comparable to those in Kazakhstan. The first construction standards for new buildings are already aimed at minimising heat loss.



Agriculture

KAZAKHSTAN'S AGRICULTURE IS UNDERGOING CHANGE

Numerous project plans are fuelling demand for agricultural machinery and other equipment and inputs for plant and animal production. German suppliers are also likely to benefit from this.

Numerous agricultural clusters and more efficient land utilisation should give the sector more clout. These clusters are planned in key areas of crop cultivation and livestock farming. Their approach is aimed at complete value chains - from the production of agricultural goods to their intensive processing.

The measures are aimed at achieving a significantly higher self-sufficiency rate in the medium term - 80 per cent for staple foods by 2026. At the same time, Kazakhstan also wants to significantly increase its agricultural exports, mainly of grain. The sale of wheat abroad alone has generated revenues of US\$ 1 billion and more in recent years. Other field crops and animal production products could expand the product portfolio in foreign business in the future.

DIGITALISATION OF AGRICULTURE HAS BEGUN

In this context, digital applications are also likely to play an increasingly important role. Smart farming is currently still in its early stages in Kazakhstan, although initial experiences are quite promising. Farmers are experimenting with field monitoring using drones, navigation via GPS and the associated access to electronic mapping systems.

Crop farms that used digital solutions were able to increase their yields by an average of 10 per cent. In addition, livestock producers relying on smart farming achieved cost savings of 15 to 20 per cent. Agricultural businesses that decide in favour of new technologies for promising projects can expect lucrative investment grants.

These and other national promotional activities for the agricultural sector are organised under the umbrella of the state holding company Baiterek. In addition, a number of funding programmes from international donor organisations - especially the public contracts associated with them - also offer interesting starting points for foreign players. The Asian Development Bank (ADB), for example, is supporting a livestock financing programme and the establishment of a stock exchange for agricultural goods. The World Bank is currently active with projects in the areas of animal production and irrigation and drainage.

OPTIMISING WATER USE IS BECOMING INCREASINGLY IMPORTANT

Due to the dramatic reduction in water inflow expected in the future, the pressure to use water more efficiently is increasing. In addition to the increased demand for water in neighbouring countries, the expected decline is also due to the progressive melting of glaciers in the high mountains. Intensive irrigation farming in Kazakhstan is concentrated in the catchment area of the Syrdarya River (Kysylorda and Turkestan regions) and the Almaty region.

In addition to irrigation systems, water reservoirs and wells that need to be repaired and new ones built, the focus is also on the increased use of modern drip irrigation systems. In addition, the cultivation of particularly water-intensive crops such as rice and cotton is to be restricted.

Another priority is to significantly reduce water losses in agriculture. This is intended to counteract the erosion and soil salinisation that is progressing in many places. Due to the poor condition of some irrigation systems and inefficient irrigation methods, water losses averaging 60 to 70 per cent have often been recorded in the past.



Manufacturing industry

KAZAKHSTAN WANTS TO REDUCE DEPENDENCE ON IMPORTS

For some time now, the country has been striving to reduce its dependence on imports for numerous industrial goods. To this end, the manufacturing sector is not only to be greatly expanded, but also significantly broadened.

In Kazakhstan, metal production and processing are the main drivers of the manufacturing industry. It is by far the main contributor to the sector's turnover. In 2022, its two sub-sectors of non-ferrous metals and pig iron, steel and ferroalloys together contributed almost 44 per cent to the total production value of all manufacturing industries.

As a rule, activities are centred on the preparation and processing of locally mined metal ores. The refining that takes place is often limited to a few initial processing stages. A large proportion of the semi-finished products produced are destined for customers abroad, where the final processing takes place.



CAR INDUSTRY TAKES OFF

In mechanical engineering, the automotive sector has not only become one of the main pillars of this industry in recent years, but also one of the growth drivers of the manufacturing industry as a whole. The sector has recently been continuously increasing its production figures. About a decade after the starting signal, Kazakh automotive forges are assembling a growing number of models from foreign manufacturers and are thus determining local sales. Manageable numbers of light commercial vehicles, buses and lorries are also being produced.

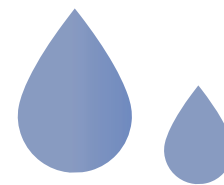
Supplied assembly components with varying degrees of disassembly are used for assembly. The focus for passenger cars is on the small and medium-sized class as well as off-road vehicles. The product ranges are regularly adapted to current demand trends. In the course of this, the vertical range of manufacture is also systematically increased. The operators of the assembly plants realise the majority of sales on the local market. They are also increasingly focusing on exporting vehicles to neighbouring countries.

GREAT POTENTIAL IN THE PROCESSING OF FOOD

The food and beverage industry is also one of the focal points of the manufacturing sector. It continues to underutilise its good potential. Despite its great agricultural potential, Kazakhstan is still largely dependent on imports for meat, milk and vegetables.

Factors hindering development include a lack of cheap credit, high wear and tear on equipment, outdated technologies and underutilised production capacities. In addition, there are deficits in the transport and storage infrastructure as well as the low productivity of the agricultural sector. At the same time, however, Kazakhstan is also an important exporter of raw materials in the food sector.

The chemical industry is also generally considered to have good chances of expanding its industrial base. For example, the expansion of three specialised industrial parks in Atyrau, Pavlodar and Taras is underway. Local raw materials suitable for the chemical industry are to be increasingly processed there under the company's own management.



Drinking water supply and wastewater management

THERE IS A MODERNISATION BACKLOG FOR DRINKING WATER NETWORKS

There is a need for expansion and modernisation in the area of municipal water supply and wastewater disposal in Kazakhstan. Especially when it comes to drinking water, the situation looks quite favourable at first glance: In the cities, the average coverage rate is now a good 98 per cent of the population, while in rural areas it is just under 95 per cent. And the expansion is continuing, so that the connection density for both settlement categories should be one percentage point higher by the end of 2023.

However, in rural areas, it is mainly populous settlements that have centralised supply networks. In contrast, villages with a small population in particular lack such networks. Around 1,400 of the approximately 6,300 rural settlements in Kazakhstan still have to get along without a centralised drinking water supply. The national programme „Clean drinking water for every settlement“, which is financed from the state budget, aims to remedy this situation.

A major problem for the supply of drinking water in cities is the high need to modernise and replace water pipes and drinking water treatment plants. They can often look back on several decades of operation. And only rarely sufficient investments have been made in the maintenance of the technology in recent years. As a result, in many places the installed pipe networks and systems have reached a level of wear and tear of 60 per cent or more, which is considered critical.

Even in Almaty, a metropolis of 2 million people, a good half of the 3,600 kilometre long drinking water pipeline network is now considered to be worn out. In order to remedy this situation, those sections of pipeline that date back to the 1960s and 1970s are to be completely renovated over the next few years. In addition, the city's population is growing significantly, which means that living space with a central drinking water supply needs to be created in more and more new neighbourhoods.

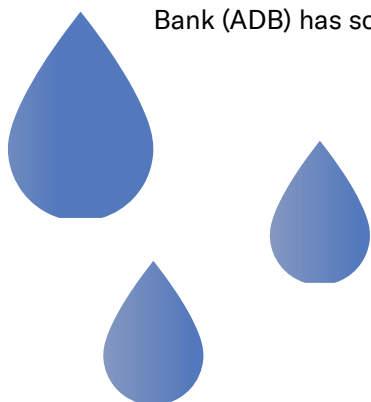
NUMEROUS CITIES NEED WASTEWATER TREATMENT PLANTS

Almaty also has a considerable need to replace the approximately 1,900 kilometre-long sewer network for the disposal of wastewater. The situation is hardly any better in most other cities. According to a government survey, the sewage networks in at least 40 cities should be fundamentally repaired or replaced sooner rather than later.

In addition, there is often a lack of wastewater treatment plants in the cities. One of the government's declared aims is for each of the 89 cities in the country to have a centralised disposal and treatment system for the wastewater produced there. As many as 27 cities do not currently have a wastewater treatment plant.

As with the water supply, Kazakhstan relies on two models to finance new construction and modernisation projects in the wastewater management sector: In larger cities (more than 45,000 inhabitants), loans from international development banks are sought, which the Kazakh side secures through state guarantees. In smaller cities (less than 45,000 inhabitants), the money required comes from the state budget.

Several wastewater projects have already been realised in the past with the help of EBRD loans. The World Bank has also provided financial support for a handful of projects. The Asian Development Bank (ADB) has so far mainly provided advisory services in the wastewater sector.



Services

INCREASING PRESENCE OF KAZAKH START-UPS ON FOREIGN MARKETS

The importance of the IT sector for the Kazakh economy is growing steadily. The involvement of IT companies has so far been concentrated in the metropolises of Almaty and Astana. In the capital, the Astana Hub is the main area of activity.

At the end of February 2023, a good 1,000 active IT start-ups were registered in the international technopark, which attracted investments of US\$ 130 million from Germany and abroad in 2022. To give its players better access to venture capital, the Astana Hub is planning its own offices in Silicon Valley in the USA.

In addition to solutions for digital applications on the domestic market, Kazakh IT players are also handling more and more orders from abroad. According to preliminary figures, the players in the Astana Hub alone exported digital services worth US\$ 165 million in 2022. Exports totalling US\$ 500 million are targeted for the entire IT sector in 2025.

In addition to the already established locations, new development centres will also play an important role. At least seven more IT hubs are planned in the regions over the next few years. The Tech Orda and Startup Orda funding programmes, which are set to train an additional 20,000 IT specialists by 2025, will ensure that they are well staffed.

5G MOBILE COMMUNICATIONS READY TO GO

The construction of a 5th generation mobile network (5G) is taking shape in Kazakhstan. The first frequency blocks were auctioned at the end of 2022. A major investment and procurement round is imminent. Network coverage in metropolitan areas is expected to be between 60 and 75 per cent in 2027.

The 5G network will be rolled out as early as 2023 in the three cities of Almaty, Astana and Shymkent. The roll-out of 5G in the capitals of the 17 regions will begin in 2024.

The Digital Ministry has already announced additional rounds of auctions for additional frequency ranges. Those interested parties who remain without a 5G licence at the end of 2022 are then likely to be the main candidates.

When it comes to purchasing the required 5G technology, it is likely that the contract will be awarded to providers from China. Kazakhstan is not following the example of numerous other countries that exclude Chinese technology from participating in the expansion of mobile networks due to security concerns.

The Kazakh mobile communications market is considered to be highly consolidated. The two most important providers are Kazakhtelecom and the VEON Group, which operates on several international markets. There are also a few so-called virtual mobile network operators (MVNOs) without their own network infrastructure.

HIGH INFLATION LIMITS GROWTH IN THE RETAIL SECTOR

The most important service sector in the Kazakh economy is trade. Growth prospects have recently become gloomier, especially in the retail sector. Due to high inflation, which amounted to more than 20 per cent on an annualised basis at the end of 2022, real incomes and therefore the purchasing power of the population are currently barely rising. Influenced by this, retail sales also only increased by a manageable 2 per cent in 2022.

The retail sector is quite fragmented. Larger chains usually only have a regional focus. Despite the rising standard of living and the advance of modern sales concepts, the bazaar trade remains an important sales channel, especially for food. At the same time, e-commerce is becoming increasingly popular.



Business practice



Legal forms for market entry

INTRODUCTION

Corporate structures in Kazakhstan are mainly regulated by the Civil Code, the Business Code, the Law on Limited Liability Companies (LLP), the Law on Joint Stock Companies (JSC), the Law on State Registration of Legal Entities and the Law on Registration of Branches and Representative Offices.

Kazakhstan occupies a special economic position in trade relations between Germany and countries in Central Asia due to the volume of trade. Correct contract design, observance of special foreign exchange regulations and compliance with the sanctions now required play a special role here.

The method of market entry depends on a number of different factors. If the business activity is aimed at expanding marketing activities, it makes sense to establish a representative office in such cases. If, on the other hand, a temporary long-term technical project is to be carried out in Kazakhstan, it may make sense to consider another form of dependent branch office (subsidiary) for migration law and other considerations.

Establishing an own subsidiary is another option. In addition to establishing a joint venture company or acquiring a Kazakh company, due diligence (legal, tax and financial) is mandatory for the latter.

Having said that, please find below an overview of the most important options for doing business in Kazakhstan.

Branch offices (subsidiaries) and representative offices

Foreign companies can establish a legal presence in Kazakhstan by setting up a branch or representative office there. A representative office can represent and protect the interests of the parent company, but should not generate any profits for tax reasons- but it is not an independent legal entity. Rather, it is a dependent branch of the parent company that is liable for the liabilities of the representative office. The branch is another form of branch office, which is also legally dependent and is established to generate profits.

The main difference between a representative office and a branch office is not so much of a legal, but of a taxation nature. While the representative office may carry out auxiliary activities for tax purposes without the intention of making a profit, the branch office takes over the functions of the parent company with the intention of making profit- and therefore has to pay taxes on its income in Kazakhstan. In addition, it should be noted here that the allocation of taxable profits between the parent company and the branch is mandatory. However, the Kazakh tax authorities have reservations about this in practice.

Subsidiaries

Decisions of a subsidiary (legally independent) can be determined by the parent company and are legally constituted, usually in the form of a limited liability company or a joint stock corporation.

LIMITED LIABILITY COMPANIES

A limited liability company (TOO) is the most popular legal form in Kazakhstan. The establishment of such a subsidiary should be carefully prepared despite the short registration period. Firstly, it must be ensured that the so-called „grandchild prohibition“ applies. In principle, a Kazakh company can be founded by a single shareholder. If the sole shareholder is a legal entity (parent company) whose shares in turn belong to a single legal entity as the sole shareholder (grandparent company), Kazakh law stipulates that there must be another shareholder in the Kazakh TOO in addition to the parent company, even if its shares may be insignificantly small.

The establishment of a Kazakh limited liability company (TOO) requires articles of association and, if applicable, a partnership agreement between several shareholders. When establishing a Kazakh joint venture company, particular attention must be paid to the partnership agreement and the articles of association themselves. Although the Kazakh TOO law is similar to German law, there are considerable pitfalls with regard to regulations on voting in the shareholders' meeting, so-called deadlock situations, etc.

In addition to the careful preparation of the necessary drafts, which can be done in parallel with the procurement of the necessary documents, checklists should be used. The checklist should indicate which documents must be submitted and in what form (notarised, apostilled, etc.). Depending on the federal state and region, it can sometimes take up to four weeks for the documents to be issued.

The registration process itself can take between one hour or up to two weeks. This depends largely on whether an office has been rented, whether the managing director to be appointed is a Kazakh citizen and a variety of other factors. As a rule of thumb, it can therefore be assumed that it will take up to eight weeks from the decision to enter the market until the registration certificate is received, despite the advancing digitalisation in Kazakhstan.

The minimum share capital upon registration may theoretically be as low as KZT 1. However, the financial requirements of Kazakh companies should be carefully calculated when entering the market. If financing through loans is considered, foreign exchange requirements such as the standard market interest rate or the possible need to register the loan agreement must be taken into account. As a rule, it is advisable to provide the Kazakh subsidiary with sufficient share capital so that it can manage without further liquidity requirements for at least six months.

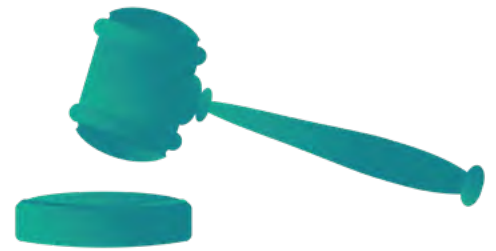
The shareholders are generally only liable up to the amount of their contributions. This does not apply if the contributions have not been made or in the event of insolvency. A company is only liable for its own liabilities and not for the liabilities of its shareholders.

In principle, there is a separation between the assets of the company and those of the shareholders. A limited liability company can pursue any permitted business activity, provided Kazakh law does not impose any explicit restrictions (e.g. in the construction sector, where licences are required). It is therefore essential to check in advance whether licences are required to carry out the business activity.

JOINT STOCK COMPANIES

The formation of joint stock companies is less relevant in practice. A joint stock company is a legal entity whose stock capital is divided into stocks. A JSC has its own assets, which are separate from the stockholders' assets, and is only liable for its liabilities. The stockholders, for their part, are not liable for the liabilities of the JSC and bear the risk of loss in the amount of their contributions. The number of stockholders is not limited. Following the revision of the Joint Stock Company Act, there are now only „Open Joint Stock Companies“ (OJSC).





Legal framework for investments

INTRODUCTION

The framework conditions for investments are explained below. Kazakhstan continues to be a highly attractive country when it comes to foreign investment in particular. This is not least due to the sanctions imposed on Russia – a circumstance that has made Kazakhstan the new economic hub in Central Asia. As the economically strongest country in Central Asia, the inflow of foreign investment increased again in 2022 compared to the previous year¹. The most important countries investing in Kazakhstan are the Netherlands², the USA, Switzerland, Russia, China, Belgium, the United Kingdom, Turkey and France.³

The attractiveness of the Republic of Kazakhstan is strengthened above all by the fact that an attractive investment climate has been created through legal framework. This attractive investment climate is achieved primarily through special institutions that aim to improve the domestic investment climate, as well as through state subsidies and the establishment of special economic zones.

Firstly, the general structure of Kazakhstan's investment institutions will be explained. This will be followed by a focused discussion of the sub-sector of investments in the IT sector. The IT sector deserves separate consideration due to its great importance for the future development of the country. Finally, the subsidies in accordance with the Kazakh business code⁴ and the Kazakh special economic zones will be explained.

INSTITUTIONS

In terms of institutions dealing with investments in Kazakhstan, the Astana Hub⁵ and the Astana International Financial Centre⁶ are particularly worthy mentioning. Both focus on the development of the country and increasing investment volumes.

ASTANA HUB

The Astana Hub institution focuses primarily on aspects of digitalisation and the development of innovative projects in Kazakhstan.⁷ According to the Hub's statement, the central goal is to create a centre for the development of innovative projects, promote economic breakthroughs in IT companies and create a breeding ground for young and talented computer scientists.⁸

1 D. Olejnik, Kazakhstan: Current Situation, O/L-1-2022, p. 3 available at: https://www.ostinstitut.de/files/de/2022/Olejnik_Kasachstan_Aktuelle_Situation_OL_1_2022.pdf

2 The reason for this is tax savings due to the Convention on the Avoidance of Double Taxation and Tax Evasion of 24 April 1996, available at: https://online.zakon.kz/Document/?doc_id=1049478&pos=2;-122#pos=2;-122

3 D. Olejnik, Kazakhstan: Current Situation, O/L-1-2022, p. 4 available at: https://www.ostinstitut.de/files/de/2022/Olejnik_Kasachstan_Aktuelle_Situation_OL_1_2022.pdf

4 Hereinafter referred to as UK

5 <https://astanahub.com/en/>

6 <https://aifc.kz/en>

7 <https://astanahub.com/en/l/h/about-us>

8 <https://www.gov.kz/article/64601?lang=en>

To this end, the establishment of the Astana Hub is aimed at the following groups of interested parties:

- Start-ups in the field of digitalisation or information technology
- Investors and business angels
- Domestic and foreign IT companies
- Experienced IT experts and mentors

The Astana Hub's programme focuses on the development of a digital economy in Kazakhstan. To this end, it offers educational programmes for start-ups and freelancers, for example. The promotion of successful entrepreneurship in the IT sector is therefore a central concern of the Astana Hub.

Infrastructure is also provided to promote the development of IT companies. For example, so-called „no-code“ development programmes are offered free of charge. „No-code“ development is a form of programming that is primarily aimed at less experienced IT experts or even laypersons. Software can be developed with little or no use of programming language. Similar programmes are, for example, „Kissflow“ or „Elma-365“.

However, the Astana Hub is also involved in the country's regional development. For example, a network of start-up programmes was initiated in 2022 with the help of partners spread throughout Kazakhstan. The partners throughout Kazakhstan offer training programmes and aim to create a breeding ground for Kazakhstan's IT business culture.

ASTANA INTERNATIONAL FINANCIAL CENTRE (AIFC)

Since the establishment of the Astana International Financial Centre (AIFC) in 2018, the AIFC has attracted approximately \$7.4 billion in investments in Kazakhstan. According to the AIFC's annual report, 550 new participants joined the AIFC in 2021.⁹

The AIFC is based on a national development plan. This consists of three pillars:

- Increasing the welfare of Kazakh citizens
- Improving the quality of institutions
- Building a strong Kazakh economy

In order to achieve these goals, Kazakhstan's privatisation strategy was relaunched, among other things. The economy is to be increasingly privatised in order to improve the competitive approach of the Kazakh economy as a whole.¹⁰

The AIFC is essentially a state-owned financial services provider. In this respect, various services are offered. One example is the services provided by the AIFC with regard to the capital market. For example, the AIFC offers support and realisation of public offerings, the provision of infrastructure for trading in company shares or stocks. The AIFC also acts as a broker. This allows trading in various currencies. The internal structure as an „ecosystem“ leads to cost advantages for brokerage companies in the Central Asian market.

⁹ AIFC, Annual Report 2021, available at: <https://aifc.kz/uploads/Annual Report/AIFC AR 2021 ENG.pdf>

¹⁰ See AIFC, Annual Report 2021, available at: <https://aifc.kz/uploads/Annual Report/AIFC AR 2021 ENG.pdf>

The AIFC also offers asset management for investment activities and portfolio management. Investment funds can also be managed. The portfolio also includes insurance products.

As a modern financial services provider, the AIFC also offers various technical financing solutions known in the western hemisphere as „FinTech“. Offerings such as crowdfunding as a financing option with a large number of private and institutional investors or trading in digital goods are a matter of course for AIFC. Kazakhstan, like other Asian countries in particular, is developing its own cryptocurrency, which is also to be embedded in the AIFC.¹¹

The subsidiary organisation AIFC Business Connect (ABC) is an AIFC service that focuses on providing support, advice and information about AIFC products and services. AIFC is also integrated into the investment structures of the Republic of Kazakhstan and is working quite successfully to attract international investment to Kazakhstan. The aim is to reach \$10 billion in investments by 2025.¹²

In order to achieve this goal, the investments of foreign investors should be safeguarded. The AIFC has therefore developed corporate governance principles, among other things. The three most important corporate governance principles are as follows:

- Focus on shareholder value
- High ethical standards in the corporate culture
- Targeted implementation of the corporate culture

By creating corporate governance structures, companies are less vulnerable to corruption. In addition, the focus on shareholder value ensures that the interests of the investor, who will mostly take the position of a shareholder, are better taken into account. In addition, members of the AIFC are offered tax benefits to promote economic growth.¹³

Arbitration proceedings with their own formal and substantive law are also offered in subsidiary organisations of the AIFC.¹⁴ In addition, „ordinary“ court proceedings are also offered.¹⁵ This also leads to criticism of the existence of the AIFC.

The AIFC offers its own investment jurisdiction, with its own bodies, its own administrative procedures and the right to create its own standards.¹⁶ National (Kazakh) law is de facto inapplicable on the territory of the AIFC. The establishment of the AIFC was only possible through corresponding constitutional amendments. Nevertheless, the status of the AIFC is sometimes described as unconstitutional and the dissolution of the AIFC is demanded.¹⁷

11 DAZ (Glas, Othmara): The Silk Road goes digital in Kazakhstan, available at: <https://daz.asia/blog/in-kasachstan-wird-die-seidenstrasse-digital/>.

12 AIFC, Annual Report 2021, available at: <https://aifc.kz/uploads/Annual Report/AIFC AR 2021 ENG.pdf>

13 Cf. for example: Rödl & Partner, Elevator Pitch - Kazakhstan, available at: <https://www.roedl.de/de-de/de/medien/publikationen/broschueren/documents/elevator-pitch-kasachstan-roedl-partner-de.pdf>

14 See AIFC, Annual Report 2021, available at: <https://aifc.kz/uploads/Annual Report/AIFC AR 2021 ENG.pdf>

15 F. Karagussov, The problem of the legal status of the international financial centre Astana and its solution, O/L-1-2022, p. 2 available at: https://www.ostinstitut.de/files/de/2022/Karagussov_Das_Problem_des_rechtlichen_Status_des_internationalen_Finanzzentrums_Astana_und_seine_L%C3%B6sung_OL_1_2022.pdf

16 F. Karagussov, The problem of the legal status of the international financial centre Astana and its solution, O/L-1-2022, p. 2 available at: https://www.ostinstitut.de/files/de/2022/Karagussov_Das_Problem_des_rechtlichen_Status_des_internationalen_Finanzzentrums_Astana_und_seine_L%C3%B6sung_OL_1_2022.pdf

17 F. Karagussov, The problem of the legal status of the international financial centre Astana and its solution, O/L-1-2022, p. 7 available at: https://www.ostinstitut.de/files/de/2022/Karagussov_Das_Problem_des_rechtlichen_Status_des_internationalen_Finanzzentrums_Astana_und_seine_L%C3%B6sung_OL_1_2022.pdf

In addition to this legal discussion about the nature and constitutional assessment of the AIFC, however, it cannot be denied that the AIFC offers very attractive opportunities from the perspective of a foreign investor. The facilitations and offers of the AIFC make it easy for a foreign investor to realise profitable investments in Kazakhstan.

INVESTMENTS IN THE IT SECTOR

As already emphasised several times, the IT sector and digitalisation processes are of exceptional importance for Kazakhstan's economy.

DIGITALISATION PROCESSES IN THE REPUBLIC OF KAZAKHSTAN AS AN INVESTMENT FRAMEWORK

Kazakhstan is on the progressive path to digitalisation. The country aims to be one of the 30 most developed countries in the world by 2050.¹⁸ To achieve this goal, a budget of KZT 38.4 billion was earmarked in 2020 alone.¹⁹

Firstly, the „Digital Kazakhstan“ project should be mentioned.

The „Digital Kazakhstan“ project consists of 5 central aspects:²⁰

- Digitalisation of the economic sectors
- Transformation to a digital state
- Innovation promotion
- Personnel development for digitalisation
- Realisation of the digital Silk Road



The digitalisation of the economy as a central goal of the Kazakh government is similar to the German „Industry 4.0“ project²¹ for the digitalisation of the German economy. In this respect, economic processes are to be automated as far as possible and simplified using modern technology. To achieve this goal, for example, the use of modern („smart“) equipment in mining, e.g. for finding oil or gas, has been promoted.²² In addition, transport and logistics are to be simplified through predictive and AI-supported management.²³ The basis for this is the collection of mass data, e.g. in order to deploy more buses when there are large numbers of passengers.²⁴ This is criticised, among other things, because the collection of mass data, e.g. through cameras and similar, also contains a high risk of misuse and could also violate European data protection regulations.

The transition to a digital state is to be achieved primarily through the implementation of eGovernment processes. The eGovernment structures already in place in Kazakhstan are to be further expanded and improved. In future, almost all government processes are to be simplified through digitalisation. For the potential investor, this means a significant simplification of the investment project and a reduction in bureaucracy.

18 DAZ (Glas, O), In Kasachstan wird die Seidenstraße digital, available at: <https://daz.asia/blog/in-kasachstan-wird-die-seidenstrasse-digital/>

19 DAZ (Glas, O), In Kasachstan wird die Seidenstraße digital, available at: <https://daz.asia/blog/in-kasachstan-wird-die-seidenstrasse-digital/>

20 <https://egov.kz/cms/en/digital-kazakhstan>

21 Cf. for details: <https://www.plattform-i40.de/IP/Navigation/DE/Industrie40/WasIndustrie40/was-ist-industrie-40.html>.

22 <https://egov.kz/cms/en/digital-kazakhstan>

23 <https://egov.kz/cms/en/digital-kazakhstan>

24 DAZ (Glas, O), In Kasachstan wird die Seidenstraße digital, available at: <https://daz.asia/blog/in-kasachstan-wird-die-seidenstrasse-digital/>



The striving to promote innovation has already been made clear in the explanation of the Astana Hub and the AIFC. Innovative business ideas are to be promoted and the way is to be cleared for innovative investments with extensive assistance and tax relief.

Personnel development will also take place primarily in the institutions described above. Talented staff are to be trained and further educated in order to provide the future digital companies with the appropriate labour force. In particular, young talent should be promoted.

Finally, the digitalisation of the Silk Road should also be mentioned. The digitalisation of the Silk Road consists primarily of developing technology for Kazakhstan and improving access to the internet.²⁵ In 2022, the availability of an internet connection among the Kazakh population was 85.9 per cent.²⁶ By comparison, internet penetration in Germany is around 94 per cent.²⁷

Not only economic factors should be considered. So-called „smart cities“ should also be promoted and established.²⁸ Smart cities are supported in particular by AI and other digitalisation processes. For example, digitalisation should enable energy-efficient local transport. This should significantly improve transport in the city.

In addition, a cryptocurrency is to be developed on the basis of a blockchain. A technopark modelled on Silicon Valley has also been established on the AIFC site. Start-ups are to settle there and fuel innovation in Kazakhstan.

INVESTMENTS IN IT DEVELOPMENT IN KAZAKHSTAN

It is clear from the previous section that the Kazakh state is particularly keen to provide an effective digital infrastructure for investors. Kazakhstan has already recorded significant initial successes in this area, which point to a positive future trend. Kazakhstan is therefore of particular interest to investors. In any case, Kazakhstan has good infrastructure for an IT investment in Central Asia.

In addition to the special support provided by the Astana Hub or the AFIC mentioned above, there are other subsidies and incentives in Kazakhstan that make an IT investment particularly interesting. Firstly, reference should be made to the geopolitical situation. Due to the war in Ukraine and the comprehensive sanctions against Russia, Russia is increasingly being pushed out of the field of international investment. Many companies are relocating their business from Russia to Kazakhstan, which is helping Kazakhstan to achieve economic growth.²⁹ The speed of innovation is increasing and competition is growing. This should increase the chance of high returns on an investment in Kazakhstan.

²⁵ DAZ (Glas, O), In Kasachstan wird die Seidenstraße digital, available at: <https://daz.asia/blog/in-kasachstan-wird-die-seidenstrasse-digital/>.

²⁶ <https://datareportal.com/reports/digital-2022-kazakhstan#:~:text=Internet%20use%20in%20Kazakhstan%20in%202022&text=Kazakhstan's%20internet%20penetration%20rate%20stood%20at%20the%20start%20of%202022>

²⁷ <https://de.statista.com/themen/2033/internetnutzung-in-deutschland/#:~:text=In%20comparison%20with%20the%20previous%20year,%20in%20the%20year%202021%20increased>

²⁸ DAZ (Glas, O), In Kasachstan wird die Seidenstraße digital, available at: <https://daz.asia/blog/in-kasachstan-wird-die-seidenstrasse-digital/>.

²⁹ D. Olejnik, Kazakhstan: Current Situation, O/L-1-2022, p. 3 available at: https://www.ostinstitut.de/files/de/2022/Olejnik_Kasachstan_Aktuelle_Situation_OL_1_2022.pdf

However, it is not only the geopolitical circumstances, but also Kazakh law that favours IT investments. Section 5 of the Kazakh Business Code³⁰ contains the regulations for „main areas and types of state support for private companies“. This section (Art. 232 et seq. BC) regulates the promotion of private business by the state.

From the perspective of an investment in an IT company, Art. 241 et seq. BC is interesting. Art. 241 et seq. BC regulates state support for innovative companies. This support can take the form of consultancy services (business and legal), state investment in the company concerned and services relating to business incubators. IT companies are often characterised by their high innovative strength. It is therefore not too unlikely that an investor will benefit from this special support.

Every state subsidy increases the chances of a successful investment and creates competitive advantages over other investors.

Art. 283 ff. BC define funding within the framework of so-called „priority projects“. Certain investment projects are considered particularly worthy of support by Kazakh legislators and are subject to special rules.

Innovative IT projects in particular have the opportunity to fulfil the definition of a priority project as defined by the Kazakh BC. Art. 284 BC categorises investment projects as a priority if:

- The creation of new industries or new production facilities with a volume of at least 2 million times the monthly calculation index of the Republic of Kazakhstan³¹, or
- The expansion or modernisation of existing industrial facilities with a volume of at least 5 million times the monthly calculation index of the Republic of Kazakhstan

is achieved. The IT sector is still quite young in Kazakhstan and is still developing. In this respect, it is likely that most IT investments can be seen as the creation or promotion of new industries. In order to receive a subsidy, a corresponding application must be submitted (Art. 285 BC). However, some business sectors are excluded from funding. This includes gambling, for example.

The list of prioritised projects is updated twice a year. Prioritised projects primarily enjoy tax relief and protection from legislative changes (Art. 289 BC).

SUPPORT IN ACCORDANCE WITH THE BUSINESS CODE OF THE REPUBLIC OF KAZAKHSTAN

This was preceded by an examination of the promotion of specific IT projects in Kazakhstan. Now we will take a general look at possible funding under the Kazakh Business Code. Firstly, general funding will be discussed and then the more specialised areas of funding will be explained.

GENERAL SUPPORT

Irrespective of the individual investment project, the Republic of Kazakhstan provides a number of general subsidies for investments and private companies. In addition to the support provided by the institutions described above, there is also support within the framework of business incubators (Art. 233 UK).

The start-up centres deal with the promotion of young companies. To this end, expertise and experience is passed on in the form of workshops, counselling etc. The aim is to enable local companies to achieve better economic performance.

The industrial policy of the Republic of Kazakhstan can also be described as general support. Art. 245

30 „Business Code of the Republic of Kazakhstan“ No. 375-V LRK; hereinafter referred to as „UK“

31 Also referred to as the „monthly calculation figure“; corresponds to approx. 3,450 KZT as at 10 November 2023

ff. BC explains the principles of Kazakhstan's industry-friendly policy. The aim is therefore to create a climate that favours innovation and investment. How this climate is organised in detail has already been explained in detail at the beginning of this article.

Art. 276 BC contains further general support for investments in Kazakhstan. Art. 276 BC guarantees the investor a minimum level of legal protection. The legal protection of property is taken into account, as are effective law enforcement and compliance with the legal principle of *pacta sunt servanda*. This means that investors can operate in an economic environment that offers them a minimum level of legal security.

Further principles are formulated in Art. 279 BC. The article deals with state expropriation of capital goods. According to Kazakh law, these should only be possible in exceptional cases. These exceptional cases must be justified under Kazakh law. Even if an expropriation occurs as part of an investment project, the state of Kazakhstan is obliged to pay an appropriate compensation. The provisions of the German-Kazakh bilateral investment protection agreement are along the same lines.³²

The Business Code continues to favour investment-friendly regulations. The aim is to reduce the bureaucratic and organisational burden on potential investors. This endeavour is expressed in the so-called „one-stop-shop“ principle of Art. 282-1 BC. Instead of setting up a complex network of competent units, a centralised office is to be established in order to keep the investor's workload as low as possible.

Finally, the possibility of concluding an investment agreement with the state of Kazakhstan should also be mentioned. This results in considerable simplifications in the area of tax law and customs obligations.³³

A distinction can be made between the following investment projects:

AGREEMENT ON A (SIMPLE) INVESTMENT PROJECT

Investments in the creation of new, expansion and/or renewal of existing production facilities, including in production facilities created, expanded and/or renewed during the implementation of a public-private partnership project, including a concession project, are eligible. At the same time, investment preferences are granted if a legal entity implements an investment project in the areas of activity included in the list of priority activities approved by the Government of the Republic of Kazakhstan. The type of economic activity carried out by the legal entity and whether this economic activity belongs to the eligible activities is determined in accordance with the general classification system of economic activities.

FUNDING FOR SO-CALLED „PRIORITY PROJECTS“

The funding of priority projects has already been described in detail in the excursus on IT investments. At an abstract level, the requirements for funding do not change. Furthermore, either the creation of new branches of industry or new production facilities with a volume of at least 2 million times the monthly calculation index of the Republic of Kazakhstan is required or an expansion and modernisation of existing branches of industry with a volume of at least 5 million times the monthly calculation index of the Republic of Kazakhstan must be sought.³⁴

³² Schramm, Legal Framework for Investments in the Republic of Kazakhstan, WiRO 2005, 230

³³ Cf. the provisions of Art. 287 et seq. UK, in particular with regard to the obligations of the parties

³⁴ Corresponds to approx. € 14 million or approx. € 32 million (see above)

However, other requirements become more relevant at an abstract level. For example, with regard to the first alternative to categorisation as a „priority investment project“, the creation of new production facilities becomes particularly relevant. For example, the construction of a production facility in already developed sectors could be eligible for funding. It is also possible that a larger-volume establishment of subsidiaries could already receive funding.

If corporate structures already exist in Kazakhstan, however, the second alternative becomes interesting. If old production facilities are modernised and the required volume is achieved, substantial funding can be obtained.

The required minimum investment volumes will in all probability be amortised in the medium term through considerable customs and tax savings. Details are subject to qualified individual counselling. Further details on tax and other preferences can be found in the section „Taxation issues - tax and other preferences“.

It is important to clarify whether investments are being made in economic sectors that are included in the list adopted by the government. In some cases, it may also be necessary to clarify in a binding manner whether planned investments are actually included in the statutory list. For this purpose, it is necessary to obtain clarifications and confirmations from the state authorities at the beginning of the activity.

AGREEMENT ON INVESTMENTS

In accordance with Article 295-2 BC, the Government of the Republic of Kazakhstan may conclude an investment agreement with a legal entity. Such agreements are concluded for the implementation of investment projects if the investment project can be assigned to an economic sector included in the list approved by the government. The type of economic activity carried out by the legal entity and whether this economic activity is one of the eligible activities is determined in accordance with the general classification catalogue.

However, the most important prerequisite for the conclusion of an investment agreement and thus for the granting of significant tax exemptions is the amount of investment that must be channelled into the project. In order to conclude an investment agreement, the investment amount must be at least EUR 50,268,052 million.



FUNDING FOR „SPECIAL PROJECTS“

Certain sectors are particularly emphasised in the Business Code. The Kazakh legislator recognises certain sectors as particularly important and provides economically attractive support.

Some of these „special projects“ are explained in more detail below.

Companies in the social sector

Companies focusing on the social sector are supported separately. The endeavour to expand the social infrastructure in Kazakhstan is supported by various means in accordance with Art. 232 BC.

These include, for example

- Provision of infrastructure (e.g. support with procurement measures or provision of land)
- Tax advantages
- Financial support
- Providing information in the start-up phase
- Consultancy and methodical support in setting up the company

It is noticeable that the support in this area is wide-ranging. Not only monetary benefits are provided, but also effective assistance in building up the company. For example, the entrepreneur or investor can take advantage of advice and is provided with information in the early stages of the company. The advice is provided within the framework of so-called „acceleration programmes“ and is provided by state institutions.

In addition, tax benefits and financial support – primarily in the form of company investments – are also granted to ensure effective company growth.



Companies in rural regions (agricultural and non-agricultural)

Kazakhstan is also interested in the development of the country's rural regions. This area is therefore also receiving special support.

In order to promote rural areas, not only agricultural enterprises are supported, but also companies that are active outside of agriculture. The following support services are offered:

- Technical support (provision of machines and the like)
- Support in the provision of information
- Financial support
- State loans for the development of agriculture³⁵
- Business management consulting

Here, too, a broad range of support is formulated. Essentially, there are clear overlaps with the funding for social projects. However, support at a technical level should be particularly emphasised here. The provision of machinery, e.g. in the form of leasing offers, makes it easier to procure the most necessary resources for the operation of an agricultural enterprise.

Support for innovative companies

The support services for innovative companies have already been explained in detail in the excursus on IT investments. In this respect, reference is made here to the information already provided.

Support for small and medium-sized enterprises

Small and medium-sized companies also receive special support. The definition of company size is based on statutory standards.

In order to optimise the efficiency of the use of funds in Kazakhstan, Art. 234 BC contains the basis for the transfer or leasing of unused state property. This expresses the principle that no economically utilisable assets should remain unused.

SPECIAL ECONOMIC ZONES

Another Kazakh instrument that provides an attractive framework for investment are the so-called „special economic zones“. There are 13 special economic zones in the Republic of Kazakhstan that are exempt from VAT and corporation tax.³⁶ The establishment of the special economic zones is intended to promote economic development in these special regions.

The special economic zones must be distinguished from the so-called „industrial zones“. There are 26 industrial zones in Kazakhstan.³⁷ Industrial zones are characterised by the fact that land and infrastructure are provided and the conclusion of investment agreements is possible. There are no industry restrictions. The industrial zones are also intended to promote economic development, but they use different means and methods than the special economic zones in focus here.

Kazakhstan's special economic zones are divided up according to sector. The Aktau seaport special

³⁵ Cf. e.g. Art. 236 UK

³⁶ <https://www.gov.kz/article/64601?lang=en>

³⁷ <https://www.gov.kz/article/64601?lang=en>

economic zone, for example, is focused on plant and mechanical engineering, while Burabai is intended to expand the tourism industry.³⁸ The advantage of a special economic zone is the tax exemption and the long-term duration. Special economic zones are generally designed for 25 years and thus enable particularly favourable investment conditions that facilitate long-term growth.³⁹ Furthermore, larger write-offs are also possible, which additionally reduce profits and further reduce the tax burden.

The effectiveness of special economic zones is convincing. Positive historical examples include the former special economic zones of Astana and Aktau, which were limited to 2006 and 2007 respectively.⁴⁰

It can therefore be interesting for an investor to examine the possibilities of investing in a special economic zone, as this is where the greatest cost advantages can be realised.



CONCLUSION

To summarise, Kazakhstan has a highly attractive investment culture. The legal framework provides attractive funding opportunities for a wide range of industries and investment alternatives.

The success of the government's measures can be seen in the Republic of Kazakhstan's increasing economic growth and the numerous successful investment processes.

In this respect, the investor is required to carefully examine which investment structure is most interesting for him and which subsidy he should best apply for in his individual case. The need for interdisciplinary advice should not be ignored here. The aforementioned examination should be carried out by a team of experienced legal and tax consultants, accountants and auditors. Exclusions exist in some cases. This means that if the company is located in a special economic zone, the investor cannot claim support under the Business Code. The same applies in the opposite case.

As a result, it remains to be seen how the investment culture in Kazakhstan will continue to improve and how the investment potential realised in Kazakhstan will be realised.

38 <http://www.oekg.eu/31-news/83-special-economic-zone>

39 GTAI (Rozhyna Y./Marenkov D.), Kazakhstan: Investment Law, available at: <https://www.gtai.de/de/trade/kasachstan/recht/kasachstan-investitionsrecht-889854#toc-anchor--5>

40 See Schramm, Rechtliche Rahmenbedingungen für Investitionen in der Republik Kasachstan, in: WiRO 2005, 230 (231)

Payment transactions

Compared to other countries in Central Asia, Kazakhstan has a stable and modern banking system. However, outdated structural thinking prevails in some areas, leading to increased bureaucracy in the processing of payment transactions due to regulatory requirements. These include money laundering regulations on the one hand and regulations designed to prevent the outflow of money from Kazakhstan by numerous oligarchs on the other. Finally, the effects of the sanctions against Russia are also being felt.

Below, an overview of the money laundering regulations applicable in Kazakhstan will be presented. A practical focus will be placed here. The aim is to show how the money laundering regulations affect the day-to-day business of a company operating in Kazakhstan.

Firstly, there is the Law of the Republic of Kazakhstan on „Countermeasures in relation to money laundering and terrorist financing“ from 2009.⁴¹ Secondly, the Law „On Approval of the Requirements for Internal Control Regulations to Combat Money Laundering of Proceeds from Crime and Terrorist Financing for Credit Institutions“ of 2016.⁴²

The first law takes a more general focus and sets out general requirements for the collection of information and the establishment of control systems.

The requirements of the law, which are linked to the amount of money transferred, are of particular interest for everyday business practice.⁴³ If, for example, an amount of KZT 1 million or more is transferred and this amount is related to gambling, the transaction is automatically subject to financial monitoring. This requires comprehensive control measures, such as due diligence checks of the transaction partner (Art. 5 of the law) or the collection of more data on the transaction partner. In addition, a broader range of information about the business partners must be collected.

In practice, this will be reflected in higher transaction costs. In individual cases, a detailed examination is required to determine whether the requirements of the law are met and whether precautionary measures need to be taken. This can slow down day-to-day business operations.

Companies are also obliged to report to special authorities (Art. 10 II). The subject matter of the transaction must be reported, as well as the persons involved and any suspicious circumstances. This creates the need for the company to set up an information system tailored to the requirements of Kazakh law and to structure corresponding business processes.

The second law focuses primarily on the banking sector. The aim is to establish an international control system to prevent the outflow of money from Kazakhstan. Transactions are to be analysed for anomalies (Art. 12). A risk management system is also to be set up to monitor international transactions. This is reflected above all in longer processing times for banking transactions in Kazakhstan. As banks are subject to additional obligations, the processing time for foreign payments or the opening of a bank account can take longer in day-to-day business in Kazakhstan.

It is also advisable to check the business contacts yourself before carrying out the transactions in order to avoid delays and further problems later on. However, this does not restrict business opportunities in Kazakhstan.

Following the start of the war of aggression against Ukraine, Kazakh banks, referring to existing money laundering regulations – apparently out of fear of secondary US sanctions – are imposing increased requirements to identify the ultimate beneficial owner. This leads to complex documentation requirements and further delays.

41 „On Countermeasures in relation to money laundering and terrorist financing „, of 28.08.2009, No. 191-IV

42 „On Approval of the Requirements for Internal Control Regulations to Combat Money Laundering of Proceeds from Crime and Terrorist Financing for Credit Institutions „, of 5.04.2016, No. 13688

43 See Art. 4 of the law

Measures taken by the Republic of Kazakhstan are bearing fruit. While Kazakhstan was still labelled a stronghold of money laundering in 2006⁴⁴, this status has since changed. As early as 2014, the OECD reported significantly improved conditions in Kazakhstan with regard to money laundering and similar crime.⁴⁵ Further improvement is expected in the future. From a practical perspective, increasing efficiency in favour of reducing transaction costs is particularly important.

Compared to the German Money Laundering Act, there are overlaps in particular with regard to the establishment of a risk management system (Section 4 Law on Money Laundering, LML) and requirements with regard to customer due diligence (Sections 10 et seq. LML). The overlaps will mean that no major changes will be necessary for a German entrepreneur who is also active in Kazakhstan. Due to the sanctions, however, it is to be expected that the documentation effort with regard to the beneficial owner will increase significantly.

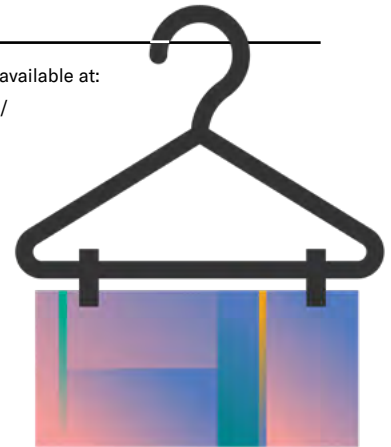
However, Kazakhstan does not have a transparency register as required by German law (Sections 18 et seq. LML). Due to the lack of centralised data collection in a public register, it could be assumed that the monitoring of business contacts in Kazakhstan is more difficult than in Germany. However, there are several ways to obtain information on Kazakh beneficial owners from public registers.

44 Cf. e.g. DAZ: Ringing tills despite a lack of customers: Kazakhstan as a money laundering stronghold, available at:

<https://daz.asia/blog/klingelnde-kassen-trotz-fehlender-kundschaft-geldwschehochburg-kasachstan/>

45 OECD: Anti-Corruption Reforms in Kazakhstan, available at:

<https://www.oecd.org/corruption/anti-bribery/Kazakhstan-Round-3-Monitoring-Report-ENG.pdf>



Currency risks – impact of the exchange rate volatility of the Kazakh tenge on trading and dividend payments

The exchange rate of the Kazakh Tenge to the Euro is a key factor in international trade and financial flows between Kazakhstan and the eurozone. The Tenge has experienced notable volatility in the past, influenced by a variety of factors, including oil price fluctuations, global market sentiment and economic policy decisions in Kazakhstan. This volatility can have a significant impact on business activities, particularly with regard to trading and dividend payments.

For companies operating in Kazakhstan and trading in Euros, a weak Tenge means that their products and services could potentially become cheaper for buyers in the eurozone. This can lead to an increase in exports. Conversely, a strong Tenge can dampen exports. This is critical for exporters and importers alike as it affects pricing, cash flow and ultimately profitability. Conversely, this means that a weak Tenge can reduce imports of European products. This has a corresponding impact on the solvency of Kazakh importers. Accordingly, caution must be exercised when drafting contracts with Kazakh companies. Solvency should also be scrutinised, particularly in the event of changes in macroeconomic factors.

Dividend payments from Kazakhstan-based companies to European parent companies are also affected. If the Tenge depreciates, investors who convert dividends into Euros may receive less for their investments, which may reduce the attractiveness of Kazakh shares for foreign investment depending on the exchange rate. However, a gaining Tenge may lead to higher converted dividend yields.

In addition, companies operating in multiple currencies must consider the possibility of gains or losses from exchange rate differences. Foreign exchange risk can affect a company's financial results through unrealised and realised gains or losses. Financial instruments such as futures, options and swaps are often used to manage this risk, but not all companies hedge their exposure, which can have a significant financial impact.

Overall, it is essential for stakeholders doing business in or with Kazakhstan to closely monitor the tenge's exchange rate movements and develop strategies to protect against unpredictable fluctuations. Monitoring trends with the help of a local advisor and using risk management tools are crucial to minimise any potential negative impact on trade and investment.





PPP (Public Private Partnership)

INTRODUCTION

When the Republic of Kazakhstan gained independence in 1991, the newly independent Kazakhstan faced new challenges. An infrastructure in need of improvement as a relic of the past times as a Soviet republic partially hindered economic growth. Rapid expansion and vigorous development towards an economically focused expansion of the national infrastructure is a key objective.

As an investment plan always requires mirror-image financing, a financing plan adapted to the needs of the Kazakh economic situation is necessary. The Kazakh government has realised that private participation in the financing of public projects is essential due to the significant investment volumes planned.⁴⁶

In this respect, the economic policy circumstances described at the beginning of this overview represent the birth of public-private partnerships⁴⁷. PPP projects are primarily used for financing projects in the area of infrastructure in the public interest. PPP projects continue to be very important in this respect and are tending to become even more relevant⁴⁸. The total investment volume of PPP projects in Kazakhstan amounts to approximately \$3.2 billion⁴⁹.

The amount of money that has already been channelled makes potential investments in the PPP sector very interesting. Some aspects are highlighted below. Firstly, the development and history of PPPs in Kazakhstan since the 1990s will be summarised in order to then outline the current investment opportunities in individual economic sectors. The legal framework will then be explained. The following presentation considers potential opportunities for private investors in PPP projects and provides an outlook for the future of PPP projects.

⁴⁶ <https://invest.e-vko.kz/en/menu/v-pomoshh-investoru/gosudarstvenno-chastnoe-partnerstvo.html>

⁴⁷ Hereinafter referred to as „PPP“

⁴⁸ For example: Asian Development Bank (n.d.): Public-Private Partnership Monitor Kazakhstan, p. 4

⁴⁹ <https://astanatimes.com/2021/04/public-private-partnership-projects-ongoing-in-kazakhstan-reach-3-3-billion-in-total-investments/>

DEVELOPMENT AND HISTORY OF PPPS

The implementation of investment projects was still challenging and complex at the beginning of the 1990s as, among other things, there was no established legal framework for PPP projects. Although the first law on concessions in the context of PPP investments was passed at the end of 1991, it was rejected again in April 1993. At that time, concessions primarily covered the leasing of property or land and natural resources from foreign legal entities.⁵⁰

This was followed by a period of 13 years without a specific law addressing the challenges of regulating concessions in connection with PPP projects. Nevertheless, PPP projects were carried out during this period. Prominent examples of this include the „Kharsk – Ust Kamenogorsk“ railway line⁵¹ and the energy supply route in the Aktyubinsk region in northern Kazakhstan.

The lack of a law was brought to an end on 7 July 2006 with the enactment of the „Law of the Republic of Kazakhstan on Concessions“⁵². The PPP projects of the passenger terminal of the international airport in Aktau, the Yeraliyev-Kuryk railway line and the gas-fired power plant in Kandygash were realised within a short period of time under this law.

The use of PPP projects up to this point was made considerably more difficult by the fact that the law led to complex bureaucratic processes that made such projects less attractive. An unclear legal situation with an excessively narrow scope of application and a complicated network of responsible institutions led to the unattractiveness described above.

A new law was passed on 31 October 2015 to put a stop to these obstacles in the economic infrastructure development of the Republic of Kazakhstan. The „Law of the Republic of Kazakhstan on Private-Public Partnerships“ with the No. 379-V 3 PK⁵³ should provide a more efficient and comprehensive regulation of the subject area.

The old concession law nevertheless retained its validity. However, according to the principle of *lex posterior derogat legi priori*, it is now only applicable to fill the gaps in the PPP Act.⁵⁴ The Kazakh investment portal presents a 3-step illustration of the development of PPP systems in Kazakhstan:⁵⁵

1. Preparation
2. Realisation
3. Optimisation

Firstly, a policy for dealing with PPP projects was developed at legislative level. The current legal situation was analysed. A portfolio of possible PPP projects was then compiled in order to determine the scope of application of PPP projects. The information gathered can then be used to formulate a draft law for dealing with PPP projects.

50 <https://invest.e-vko.kz/en/menu/v-pomoshh-investoru/gosudarstvenno-chastnoe-partnerstvo.html>

51 <https://invest.e-vko.kz/en/menu/v-pomoshh-investoru/gosudarstvenno-chastnoe-partnerstvo.html>

52 Hereinafter referred to as „concession right“

53 Hereinafter referred to as the PPP Act

54 See for example: Asian Development Bank (n.d.): Public-Private Partnership Monitor Kazakhstan, p. 10

55 <https://invest.e-vko.kz/en/menu/v-pomoshh-investoru/gosudarstvenno-chastnoe-partnerstvo.html>

In the implementation phase, the scope of PPP projects will be expanded. New forms of financing PPP projects will be sought and a more stable legal situation will be created.

Finally, in the next phase, the implementation models of PPP projects are to be continuously improved. The project financing system is to be perfected and highly qualified public employees are to monitor the progress of PPP projects in certain institutions.

CURRENT FIELDS OF APPLICATION FOR PPPS

The fields of application of PPPs can probably best be described as public infrastructure projects. PPPs are intended to offer the opportunity to finance infrastructure projects with a broader range of financing in order to promote the economic and socio-economic development of the country.

The Kazakh government's website⁵⁶ lists the following projects as examples of possible PPP applications:

- Construction and reconstruction work on educational facilities (kindergartens, schools, school / student dormitories)
- Modernisation of school cafeterias
- Construction and operation of sports facilities
- Construction and operation of healthcare facilities

However, if we look at the PPP projects that have already been implemented or are still being implemented, a certain bias in favour of energy supply projects can be observed. According to data from the World Bank, 17 of the 23 projects implemented between 1990 and 2021 were in the energy supply sector.⁵⁷ The implementation of PPP projects is also possible in the field of renewable energies. However, attempts to implement PPP projects in the field of renewable energies have not yet been successful.⁵⁸ The reason given for this is the obligation to transfer assets back to the state at the end of the contract term.⁵⁹

The investment volume for energy projects amounts to around \$2.4 million.⁶⁰ The remaining projects are spread across railways, roads, airports and waste disposal. In this respect, energy supply can be clearly identified as the most important sector for the use of PPP structures.

However, this monopolisation of the use of PPP financing strategies does not seem surprising when one considers the enormous economic importance of the energy sector in Kazakhstan. Kazakhstan has the 9th largest oil reserves in the world, accounting for around 73 per cent of Kazakhstan's exports.⁶¹ It is therefore not surprising that the great economic potential in this sector is reflected in the corresponding statistics regarding the use of PPP financing strategies.

56 https://egov.kz/cms/en/articles/business_registration/partnership

57 <https://ppi.worldbank.org/en/snapshots/country/kazakhstan>

58 Asian Development Bank (n.d.): Public-Private Partnership Monitor Kazakhstan, p. 69

59 Cf. Asian Development Bank (n.d.): Public-Private Partnership Monitor Kazakhstan, p. 69

60 <https://ppi.worldbank.org/en/snapshots/country/kazakhstan>

61 See. <https://tradingeconomics.com/kazakhstan/exports> (as at November 2022)

LEGAL FRAMEWORK OF A PPP PROJECT

There are essentially two laws that refer to PPP projects. These are the PPP Act and the Concessions Act. As an older law, the Concessions Act is overshadowed by the application of the PPP Act.

The PPP Act, which is therefore much more significant, formulates the main objectives of such a partnership in Art. 3. The aim is to create circumstances that enable meaningful co-operation between the private and public partners (No. 1) as well as increased attractiveness for investors (No. 2) and the improvement of the national economy (No. 3). These principles can be used to interpret the legal documents relating to a PPP project.

Art. 7 offers a portfolio of different forms of implementation, without being exhaustive.⁶² The following forms of implementation are offered in extracts, for example:

- Concession
- Leasing of state property
- Service / work contracts

Article 9 No. 2 of the PPP Act is also of not insignificant importance from the perspective of a private investor. This regulation guarantees the private partner full reimbursement of costs in the event that the social infrastructure project does not generate a return on the private investment. In this respect, this regulation reduces the risk of an investment from the perspective of a private investor in Kazakhstan.

Article 10 of the PPP Act sets out a rough outline of how the implementation of a PPP project should be organised:

1. Development of an investment offer by the public partner
2. Determination of the private partner in accordance with Art. 31 of the PPP Act
3. Conclusion of a PPP contract
4. Fulfilment of obligations

There are various procedures for determining the private partner. The tendering procedure⁶³ allows various private investors to apply. Negotiations between the parties begin after a selection process.⁶⁴

However, there is also the option of so-called „direct negotiations“⁶⁵ and an auction procedure⁶⁶.

The distribution of risk in the absence of an agreement is similar to the principles of German law. According to Art. 14 No. 3 of the PPP Act, the party that can prevent the risk at the lowest cost should bear the risk.

Art. 17 of the PPP Act formulates the obligations of the public partner. The rights of the public partner, which still require more precise formulation in the PPP agreement, are essentially limited to the following:

- Negotiations
- Analyses of the financial and economic activities of the private partner
- Unrestricted access to the documentation



62 Cf. Art. 7 3. 8) PPP Act

63 „open tender“

64 Asian Development Bank (n.d.): Public-Private Partnership Monitor Kazakhstan, p. 24

65 Cf. Art. 31 No. 1 2) PPP Act

66 Cf. Art. 31 No. 1 3) PPP Act

The public partner's portfolio of duties can be summarised as follows:

- Transfer of rights to the object of the PPP agreement in accordance with the terms of the contract
- Compliance with all laws of the Republic of Kazakhstan and the agreements in the PPP contract

In this respect, it is clear that when organising a PPP project, a more precise list of obligations must be contractually agreed. Interdisciplinary advice is therefore essential.

However, it is not only the PPP Act and concession law that apply to PPP projects. Rather, the following laws have an influence on a PPP project:⁶⁷

- Kazakh Constitution
- Kazakh Civil Code
- Kazakh Commercial Code
- Kazakh law on state property
- Kazakh Tax Code
- et al.

OPPORTUNITIES FOR A PRIVATE INVESTOR IN A PPP PROJECT

Investments within the framework of PPP projects are subject to increased security requirements and are therefore of particular interest to international investors. For example, increased security with regard to the amortisation of the investment is created through consumption guarantees from the Kazakh state.⁶⁸ It is also possible to access property rights within the framework of PPP projects. For foreign investors, this is only possible to a very limited extent under Kazakh law without state involvement.⁶⁹ In addition, co-operative financing is possible through a public partner, which results in larger investment volumes. From an economic perspective, the effects of fixed cost degeneration can be better utilised.

In addition to investment protection under the PPP Law, which is primarily characterised by state guarantees, there is also general investment protection under the Kazakh Business Code⁷⁰. On the one hand, the Kazakh BC offers general protection. For example, the protection of property and the guarantee of protection of other rights is guaranteed by Art. 274 BC. Expropriation can only be carried out in exceptional cases regulated by law. In this case, the investor is entitled to compensation. There are also special investment protection regulations for some sectors. These include, in particular, the innovative sector (especially IT investments) and investments in rural areas.

There has been an investment protection agreement between the Federal Republic of Germany and the Republic of Kazakhstan since 1995, which also offers investment protection. The agreement was ratified by law on 23 November 1994.⁷¹ The agreement obliges both parties to treat capital investments from both countries no less favourably than domestic capital investments (Art. 3 of the agreement). Art. 4 considerably limits the possibilities of expropriation. Accordingly, expropriation is only possible for the common good and only in return for compensation. In this respect, the international treaty essentially corresponds to the provisions of national Kazakh law.

⁶⁷ Asian Development Bank (n.d.): Public-Private Partnership Monitor Kazakhstan, p. 39.

⁶⁸ https://egov.kz/cms/en/articles/business_registration/partnership.

⁶⁹ For example, no agricultural land can be acquired without state participation.

⁷⁰ Designated as „BC“.

⁷¹ See: Federal Law Gazette II 1994, p. 3730 ff.

OUTLOOK

Looking at the past development of PPP projects, a positive forecast can be made. The legal and economic development of PPP projects is characterised by continuous improvement.

The legal situation has been significantly strengthened by the PPP law. Special PPP institutions, such as the Kazakh PPP Centre, have concentrated know-how and facilitated the implementation of PPP projects overall. Even if some of the structures are still unclear, particularly with regard to the responsibilities of the individual institutions, interesting infrastructure projects with corresponding returns can already be realised in Kazakhstan today.



CONCLUSION

PPP PROJECTS are attractive to international investors as private sector entities. As a result, a win-win situation is created, as the Kazakh economy also benefits. The foreign or other private investor is offered increased security as well as co-operative (pre-)financing and consumption guarantees and Kazakhstan benefits from the expansion of infrastructure. The further development of this investment area is something to watch with interest.





Labour law environment

WORKING HOURS, HOLIDAYS, MINIMUM WAGE

The normal working week has five working days with a 40-hour week. Overtime is permitted, but may not exceed 2 hours per day and 4 hours per week. Saturday and Sunday as well as public holidays such as (Orthodox) Christmas and the Muslim feast of sacrifice („Kurban-ait“) are generally considered days off. Overtime must be paid at 150 per cent of the normal wage. On non-working days and public holidays, overtime must be paid at 200 per cent. The statutory minimum holiday entitlement is 24 calendar days. Employees are entitled to a continuous holiday of two weeks. There are special regulations for special categories of employees (e.g. maternity leave, etc.). The statutory monthly minimum wage is currently the equivalent of approx. 100 Euros.

SALARY PAYMENT

Salaries must always be paid in Tenge. Branches and representative offices must adhere to this rule as well. They can pay their employees' salaries in cash or by bank transfer to a current account opened in Kazakhstan.

CANCELLATION

In principle, employees can give one month's notice. The employer's options for dismissal are limited and only permitted in the cases listed in Art. 52 of the Labour Code, including liquidation, downsizing, lack of suitability or qualifications of the employee, drunkenness at work, etc. Overall, Kazakh labour law is very formalistic and very employee-friendly. Compliance with the formalities of dismissal must be ensured in order to avoid lengthy labour law disputes, which usually have negative economic consequences. In certain cases, such as dismissal due to liquidation or downsizing, the employee must be paid a severance payment.

Different regulations apply to the managing staff, which are more employer-friendly.

REDUCTION IN WORKING HOURS AND HEADCOUNT

Since the economic crisis in 2015 / 2016, Kazakhstan has reformed its labour code. The employer can reduce the number of employees in the event of changes to the company's key business figures and a corresponding reduction in staffing requirements. As a milder measure, the employer can order a reduction in working hours.

COLLECTIVE AGREEMENTS

The Kazakh labour law concept includes the concept of a collective agreement, i.e. a written agreement between the employee representative and the employer. The collective agreement contains, among other things, provisions on the implementation of healthy and safe working conditions, performance of other actions by the employer.

WORK PERMITS

A work permit must be obtained before hiring a foreign worker. A work permit is the authorisation to recruit foreign workers granted by the competent authority to the employer to recruit foreign workers for a period of up to three years within the quota set by the central government authority.

The competent authority for issuing a work permit is the local administrative authority „Akimat“. The procedure for issuing a work permit takes at least 2 months. There are 4 categories of work permits, namely for:

1. Managing directors and their deputies,
2. Head of department,
3. highly qualified specialists and
4. Trained workers

The work permit for the 1st category can be issued for a period of up to 3 years and can be extended for a further 3 years on application. For the 2nd and 3rd categories, the permit is generally issued for a maximum of 12 months. The work permit for these two categories can be extended once.

An extension of the authorisation within the 4th category of a duration of 12 months is not possible. If an employee in the first 3 categories who is employed by a foreign employer is dismissed before the expiry of their employment contract, the foreign employer is entitled to hire a foreign employee with the appropriate qualifications for the same position for the remaining term of the work permit issued for this position.

A work permit issued is the basis for the issue of a work visa, which is valid for the duration of the work permit. Violations of immigration law requirements are punishable by substantial fines; the employee may also be ordered to be deported.

EXEMPTION FROM THE WORK PERMIT REQUIREMENT

The following groups are exempt from the work permit requirement:

- Managers of branches and representative offices of foreign companies;
- General directors of companies that have concluded an investment contract with the Kazakh government for at least 50 million US dollars or that invest in so-called priority areas and have concluded contracts with the competent authorities;
- Citizens of the Russian Federation and other member states of the Eurasian Economic Union;
- Actors, athletes, sports coaches, artists, musicians, etc.;
- Qualified personnel travelling within the framework of bilateral and international agreements with Kazakhstan in the field of space technology development;
- Medical personnel working for the Kazakh JSC „National Medical Holding“;
- University lecturers.

LABOUR MIGRATION IN THE EURASIAN ECONOMIC UNION

The Republic of Kazakhstan is increasingly in the focus of Western media attention as a result of the war in Ukraine triggered by Russia. One reason for this was the Russian partial mobilisation.

Since the beginning of the war, German and other foreign companies with economic activities in Kazakhstan have been asking themselves whether the staff previously employed in Russia can now be transferred to Kazakhstan and employed by Kazakh companies. Due to social responsibility, but also in order to utilise the long-term experience of Russian personnel, the question now arises as to which hurdles need to be overcome in Kazakhstan in this context.



Kazakhstan ratified the Eurasian Economic Union (EAEU) Agreement in 2014. The Eurasian Economic Union Agreement (hereinafter referred to as the „EAEU Agreement“) has been in force in Kazakhstan since 01.01.2015. EAEU law does not contain any supranational or uniform labour law. However, Art. 97 of the EAEU Agreement contains provisions on labour migration and a single labour market. The principles enshrined there are comparable to the principle of free movement of labour (Art. 45 TFEU) within the EU. Workers from other EAEU states do not need a work permit to work in other member states.

The EAEU agreement thus gives employees from the EAEU member states the right to freely choose their place of work within the EAEU. Even if other regulations exist at the level of individual EAEU states, e.g. with regard to the recognition of university degrees. Although labour migration and the free movement of workers between the EAEU member states is therefore regulated at supranational level, the national regulations of the EAEU member state must be observed with regard to labour law relations.

NATIONAL MIGRATION LAW IN KAZAKHSTAN

In addition to the labour law regulations, a number of standards of Kazakh migration law must be observed when posting personnel from Russia to Kazakhstan.

In the case of the posting of an employee with Russian citizenship, it is necessary, among other things, for the employee to obtain a so-called „temporary residence permit“ with a validity period of up to one year. This requires an invitation from the Kazakh employer, with which the employee can apply for the residence permit from a member state. The duration of the residence permit is generally based on the contractually agreed duration of the employment relationship and can be extended after one year.

If the employment contract with the employee from another member state of the EAEU is terminated, the employee has the right to conclude an employment contract with another employer. Further requirements of Kazakh migration law apply with regard to any necessary registration of residence in Kazakhstan. Such reporting or registration obligations aim to statistically record the flow of workers from the EAEU. Although the services of the Kazakh migration administration are largely digitalised, administrative practice often leads to difficulties in interpreting the legal provisions, which can only be effectively overcome through qualified individual advice.

Applying for a temporary residence permit can take up to 7 working days.

OBTAINING THE SO-CALLED INDIVIDUAL IDENTIFICATION NUMBER („IIN“)

As a result of the ongoing digitalisation of the Kazakh administration, every Kazakh citizen, but also foreign citizens, including Russian citizens with a residence permit, have to possess an IIN (Individual Identification Number). With the help of the IIN, the identity of a person (together with other documents) can be established beyond doubt, including for the purposes of social security, taxation and pension insurance.

According to Art. 28 I 1 of the Kazakh Labour Code, the employment contract must contain the employee's full name, place of residence and address, identification data and IIN. The conclusion of an employment contract therefore requires that the employee from another member state of the EAEU has already received an IIN prior to the conclusion of the employment contract.

Obtaining an IIN requires an application and the submission of various documents. In principle, the application can be submitted by a third party. However, this requires a power of attorney and other documents that must be notarised.

REGULATIONS REGARDING THE PAYMENT OF SALARIES IN ACCORDANCE WITH KAZAKH LAW

According to the provisions of the Kazakh Labour Code, the salary of an employee must be paid in Kazakh Tenge (KZT). This means that employees from EAEU member states must have a bank account in Kazakh Tenge. A local bank account must therefore be opened, at least for practical reasons.

However, with the exception of the requirement to be present in person at the bank, this should not be an obstacle for Russian employees. The Russian payment system „MIR“ is currently only supported by two banks in Kazakhstan (BTB Bank and Bereke Bank). Although there are no prohibitions in this regard on the part of the Kazakh banking supervisory authority, there is uncertainty in view of the US sanctions against Russian banks, which means that most Kazakh banks do not accept cards from the Russian „MIR“ payment system.

As a result, Russian employees open their bank accounts not only in Kazakh currency, but also in foreign currencies. The issuing of VISA or MASTERCARD cards has been possible under Kazakh foreign exchange law for decades – even for foreign employees. A money transfer from Kazakhstan to Russia is possible for employees in any case without restrictions.

Opening bank accounts in Kazakhstan is therefore seen by almost all employees from Russia not as an obstacle, but as a good opportunity.

THE „OUTSTAFFING“ MODEL AS AN INTERIM SOLUTION UNTIL A SUBSIDIARY IS ESTABLISHED IN KAZAKHSTAN

„Outstaffing“ is one way of hiring out employees.

The employee concludes an employment contract with a temporary employment agency, which hires them out for a limited period of time. In Kazakhstan, there is a legal framework for the use of temporary workers, which not only serves to protect the employee, including those from other EAEU member states, but also provides tax protection, which plays an important role when considering whether the employee leasing model should be chosen until the entrepreneur is established. The involvement of a competent legal and tax advisor is strongly recommended.



CONCLUSION

German and other foreign companies that are concerned about losing their long-standing and trusted employees in Russia due to the mobilisation of the Russian armed forces are advised not only to consider Kazakhstan as an alternative sales market, but also to view this EAEU state as a retreat that offers favourable conditions for investors in view of the current freedom of movement for workers within the EAEU. Due to the favourable tax and customs framework, Kazakhstan will continue to play an important economic role as a new investment location and thus as a new „gateway“ to Central Asia in the future. The influx of well-trained specialists from Russia to Kazakhstan could further boost the country as an attractive economic centre in Central Asia.



Taxation

A selection of the most important tax regulations

The following section provides an overview of the most important tax regulations in Kazakhstan. It will focus on the most important types of tax in practice and their legal nature.

ORGANISATION OF THE TAX SYSTEM

Almost all significant provisions of Kazakh tax law can be found in the Kazakh Tax Code⁷² (hereinafter referred to as the „Tax Code“ or “TC”). In some cases, the Tax Code refers to secondary legislation (such as the Kazakh law „On Accounting and Financial Reporting“) and to some ministerial decrees. For the sake of clarity, a detailed description of these is not provided. The Tax Code underwent significant changes in 2009 and 2017. It was last amended at the end of 2023.

The tax code is generally designed to be investor-friendly. The Kazakh tax authorities are responsible for clarifying the key issues⁷³. Although the tax authorities are obliged to provide information, the information provided here is usually unproductive. In practice, this therefore requires a conservative approach with regard to the evaluation of risks.

The national regulations of the Kazakh Tax Code are supplemented by numerous international tax treaties. For example, Kazakhstan has concluded numerous agreements to avoid double taxation – including with Germany⁷⁴. For investors, this leads to a more attractive investment climate and increased legal certainty at the level of tax law.

72 „On Taxes and other obligatory payments to the budget „Tax Code““ of 25 December 2017 with the No. 120-IV

73 Similar to the ‚official investigation principle‘ in German tax law

74 See: Law on the Agreement of 26 November 1997 between the Federal Republic of Germany and the Republic of Kazakhstan for the avoidance of double taxation with respect to taxes on income and capital, available at: https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Steuern/Internationales_Steuerecht/Staatenbezogene_Informationen/Laender_A_Z/Kasachstan/1998-07-30-Kasachstan-Abkommen-DBA-Gesetz.pdf?__blob=publicationFile&v=3

However, it should be noted that many Kazakh tax authorities focus primarily on national Kazakh tax law, despite the primacy of the double taxation agreement. This means that the risk of double taxation cannot be completely eliminated. In order to avoid this risk, qualified advice is required in individual cases.

CORPORATE INCOME TAX

All companies based in Kazakhstan must pay corporate income tax. This also includes foreign companies that maintain a permanent establishment in Kazakhstan (e.g. permanent establishment for tax purposes, dependent branches) or generate revenue in Kazakhstan.

The corporate income tax rate in Kazakhstan is 20 per cent. Expenses can be claimed when determining taxable income. The tax deductibility of expenses is – in simple terms – subject to three conditions⁷⁵:

- the expenses were incurred with the intention of making a profit
- There are no statutory prohibitions on deductions
- Qualified evidence of the expenses incurred is available.

The tax authorities focus on accounting evidence for the deductibility of expenses. Further details can be found in our explanations on the requirements for tax deductibility.

VALUE ADDED TAX

Compared to Germany, Kazakhstan has an impressively low VAT rate. The VAT rate in Kazakhstan is usually 12 per cent, although there are also exceptions that are taxed at a lower rate or not taxed at all. The obligation to register as a VAT payer is only established when a certain turnover amount is reached. However, voluntary registration as a VAT payer is always possible. Taxpayers who are not obliged to register as VAT payers can claim the VAT recognised by their contractual partners as an expense to reduce corporation tax.

The question of whether Kazakh VAT must be charged in individual cases depends on whether the place of performance is in Kazakhstan. The Kazakh Tax Code contains a number of special provisions on this, which determine when the place of performance is not Kazakhstan despite the performance of services in Kazakhstan. For example, when legal services are provided to a company outside Kazakhstan, it is legally assumed that the place of performance is not Kazakhstan. Therefore, a company based in Kazakhstan that provides legal services in favour of a company based exclusively in Germany does not have to charge Kazakh VAT in its invoice.

Similarly, Kazakh taxpayers must pay Kazakh VAT at their own expense when receiving individual services from abroad (the so-called reverse charge procedure).

Kazakh VAT law also recognises the right to deduct input tax. However, there are exceptions to the right to deduct input tax. In certain cases, VAT paid as part of the reverse charge procedure cannot be fully claimed as input VAT. In some cases, Kazakh VAT law is based on the ratio of sales made in Kazakhstan - i.e. to local Kazakh companies - to the sales that the Kazakh VAT payer has generated with companies based abroad. The actual input tax deduction entitlement should therefore be calculated in advance in order to determine any effects on liquidity.

It is advisable to seek expert advice in advance on all VAT issues, even if you are only planning to realise a project from Germany.

⁷⁵ Cf. Art. 190 II Tax Code.

WITHHOLDING TAX

The income of legal entities and thus also income in the form of licence fees, remuneration and similar is subject to corporate withholding tax. The Kazakh recipients of labour and services are considered tax agents who are obliged to withhold and pay the tax.⁷⁶

Issues relating to withholding tax are dealt with in detail in the section „Current issues relating to withholding tax“. To avoid repetition, reference is therefore made to the explanations there.

PERSONAL INCOME TAX

The income of individuals who are resident in Kazakhstan for tax purposes is subject to taxation in the Republic of Kazakhstan. The question of whether a person has become resident in Kazakhstan is determined by the length of stay in Kazakhstan, the place of residence of the natural person and the centre of life. The double taxation agreement also contains other special provisions.

The 10 per cent income tax (as a separate income tax for natural persons) is withheld by the employer in Kazakhstan and paid monthly to the Kazakh fund. The 10 per cent income tax is structured as a *flat rate tax*. Foreigners who are resident in Kazakhstan for tax purposes must also pay tax on other income in Kazakhstan in individual cases, e.g. income interest. For this purpose, a tax return must be submitted independently by 31 March of the following year. If taxes have been withheld in Germany by way of taxation at source, the person must take care to obtain proof of the taxes declared and paid in Kazakhstan in order to receive a tax refund from the German tax authorities, depending on Germany's right of taxation.

CAPITAL GAINS TAX

Kazakhstan's capital gains tax is characterised by a high degree of investor friendliness. In individual cases, dividends from an investment in a Kazakh company are not subject to taxation in Kazakhstan. The capital gains tax rate of 15 per cent can be reduced by applying regulations from the double taxation agreement between Kazakhstan and Germany.

76 See Art. 645 I Tax Code





Requirements for the tax deductibility of expenses for services

According to the Tax Code of the Republic of Kazakhstan (hereinafter referred to as the „Tax Code“), a taxpayer's expenses are only recognised for tax purposes if they were incurred with the intention of making a profit. An exception is made for some costs, which are not deductible according to the Tax Code⁷⁷. Furthermore, all expenses can only be deducted if receipts are available to substantiate these expenses.⁷⁸

The Tax Code also stipulates that accounting records must include the following documents, among others⁷⁹ :

- Accounting documents - for companies and tradespeople who are required to keep accounts;
- so-called primary accounting documents;
- tax forms and tax returns;
- other documents used to determine the tax base and calculate the tax liability.

It should be noted that the determination of the tax base is based on accounting data⁸⁰. The accounting procedure and the associated documentation obligations are regulated by the Kazakh law „On Accounting and Financial Reporting“ (hereinafter referred to as the „Law“).

According to the provisions of this law⁸¹, the term accounting documents also includes so-called primary accounting documents, the form and content of which are determined by the competent Kazakh authority.

When providing services, for example, the service recipient must document in the specified form when which services were provided and also that they were accepted by them as the service recipient. The form of such an acceptance report is defined by a resolution of the Minister of Finance of the Republic of Kazakhstan as the so-called „P-1 form“. For reasons of verifiability, the acceptance report must contain further information on the type of service provided and also information on when the supplier provided which marketing, consulting and other services. Furthermore, such acceptance report requires the preparation of a report by the service provider insofar as it stipulates information on the number of pages, the date and information on the serial number of the service report.

Taking into account the above information, a taxpayer's expenses (including expenses for marketing and other services) are only deductible for the purposes of determining corporate income tax if the evidence listed above, including performance reports, confirming the receipt of the services is available.

It should be noted that the Tax Code, for example, does not contain any special regulations governing the deductibility of management services for Kazakh taxpayers. The background to these regulations is that the definition of management services is problematic and there is a significant potential for abuse. In this respect, precise and qualified evidence is required.

However, the Kazakh Ministry of Finance has issued so-called methodological instructions for conducting tax audits. These guidelines indicate that the deductibility of marketing services always requires the existence of a contract, evidence of work performed and also a report on marketing research carried out or other results of the services.

77 Para. 1 Art. 242 of the Tax Code.

78 Para. 3 Art. 242 of the Tax Code.

79 Para. 2 Art. 190 of the Tax Code.

80 Para. 3 Art. 190 of the Tax Code.

81 Para. 1 Art. 7 of the Tax Code.

With regard to other services, the guidelines recommend that local tax authorities first check whether there is a contract for the provision of services, invoices and evidence of the work performed. Such services and work can only be deductible if the services rendered were performed with the aim and purpose of promoting the sale of products. This means that expenses have been incurred for the purpose of realising an overall annual profit. In this context, it should also be noted that the accounting documents must describe the content of the services provided, the period in which they were provided and details of their scope and nature.

FROM THE PRACTICE OF THE TAX AUTHORITIES ON THE DEDUCTIBILITY OF EXPENSES

Based on our experience and recent court decisions, it should be noted that the Kazakh tax authorities have not yet taken a clear position on the documentation requirements for marketing and management services. The analysis of the legal disputes that have taken place shows that the completeness of the information is essential for the tax deductibility of the above-mentioned services. The facts of the service provision, its scope, content and nature must be conclusively presented. In detail:

Requirements for the record of the work carried out

Kazakh court practice shows that the local tax authorities usually require a detailed description of the scope and nature of the services provided in the corresponding acceptance reports (Form P-1) on the work performed. In the opposite case, the tax authorities consider such documents as „not meeting the requirements of the legislation of the Republic of Kazakhstan“ due to their allegedly improper preparation.

Requirements for other documents

With regard to other documents, the courts and tax authorities maintain the view that such documents must describe the specific content of the service, the specific nature of the services provided and the causal link between the costs (expenses) incurred and the company's activities, which must be aimed at making a profit.

If the information is not sufficiently documented, the tax authorities take the position that such expenses were „not aimed at generating profit“, with the consequence that the tax assessment basis for corporation tax can't be reduced. In addition, the tax authorities require that the primary accounting documents, including the acceptance reports, must clearly show who provided the advice, when, on what subject, where the advice was provided, to whom the advice was provided and who provided the advice. If there is no information on this, the decision will be made in favour of the tax authorities in the event of a legal dispute.



» INTERIM CONCLUSION

The above explanations show that the Kazakh tax authorities require a detailed description of the services received in the accounting documents, especially in the case of marketing and/or management services. The taxpayer must also be prepared to prove that the expenses were useful, i.e. that they were incurred with the intention of making a profit.

It should be noted that the vast majority of court disputes are decided in favour of the tax authorities. It is therefore advisable to check the accounting documents to ensure that they comply with the requirements of Kazakh tax legislation described above. An early review helps to identify potential risks. Experience has shown that a deteriorating economic situation leads to an increase in the number of tax audits.



Relationship between Kazakh tax law and international tax law – practical relevance

This section deals with the relationship between the standards of Kazakh tax law and the principles of international tax law, which are anchored in the respective agreements for the avoidance of double taxation (DTAs) and, if applicable, in additional protocols to these agreements.

In practice, individual questions increasingly arise in connection with business co-operation with Kazakh partners. These issues relate to the creation of a permanent establishment for tax purposes, the levying and deduction of withholding tax by Kazakh contractual partners, the submission of tax residence certificates and, last but not least, the problem of profit deferral.

The latter issue arises when the parent company carries out its activities in Kazakhstan through a permanent establishment located there. Recently, this issue has been attracting more and more attention from the German tax authorities. Many German companies are constantly expanding their presence in Kazakhstan. Instead of making direct investments through independent subsidiaries, German companies relatively often carry out their business activities through permanent establishments. Although from a legal point of view the parent company and the permanent establishment form a single entity, from a tax point of view they should be considered separately. The profit from the activities of the permanent establishment is only taxable in the country in which the permanent establishment is located in accordance with the provisions of the agreement. By determining the profit of the permanent establishment, the distribution of the profit of the entire company between the countries involved in this (economic) process of value creation must be ensured.

The correct distribution of profits, which is also provided for in the Kazakh Tax Code (hereinafter referred to as the Tax Code), is therefore becoming increasingly important in practice. This is discussed separately below.

CREATION OF A PERMANENT ESTABLISHMENT – RISKS OF DE-FACTO DOUBLE TAXATION

The creation of a permanent establishment and the associated creation of the Kazakh tax authorities' right of taxation are considered to be the most difficult issues in connection with economic cooperation with Kazakh partners. In this context, it is not only the norms of Kazakh tax law that must be taken into account, but also and usually primarily the regulations in the respective DTAs. According to Section 2 (5) of the Kazakh Tax Code (hereinafter referred to as the Tax Code), the provisions of international law generally take precedence.

The question of when a permanent establishment for tax purposes arises is answered both in the DTAs and in Kazakh (local) law. According to the DTA (Art. 5) between the Federal Republic of Germany and the Republic of Kazakhstan, the term „permanent establishment“ means a fixed place of business through which a company (in Kazakhstan) carries out all or part of its activities.

Only if the company carries out its activities in Kazakhstan in this way can its profits be taxed in Kazakhstan, but only to the extent that they are attributable to this permanent establishment (see Art. 7 para. 2 DTA Germany-Kazakhstan).

Consequently, two aspects must be strictly distinguished from each other. Firstly, the taxation of income in Kazakhstan requires the setup of a permanent establishment, and secondly, the permanent establishment has to perform functions that allow to determine the income to be attributed to it. Kazakhstan only has a right of taxation if both requirements are met.

Unless otherwise agreed in the respective international agreement, the provisions of Section 220 of the German Tax Code in conjunction with Sections 218 and 219 of the German Tax Code apply to the question of when a permanent establishment is created. Section 220 of the Tax Code specifies individual conditions that must be met for a permanent establishment to exist under Kazakh law. This is the case, for example, under Section 191(1) of the Tax Code if a foreign company maintains a production facility in Kazakhstan, carries out its business activities and management or undertakes geological exploration work.

Although intergovernmental law, explicitly the double taxation agreement between Germany and Kazakhstan, takes precedence, many tax authorities will initially refer to national Kazakh law and, in this respect, to Section 220 of the German Tax Code. In this respect, the examination as to whether a permanent establishment has been created should also initially be examined in accordance with national Kazakh law. In the second step, the result must be checked for compatibility with the standards of intergovernmental treaties. Of course, both sets of regulations must be observed. It is not uncommon for the result to be that, contrary to the standards of Section 220 of the Tax Code, no permanent establishment is created. In many cases, neither the Kazakh companies nor the Kazakh tax authorities are aware of the interconnection between local and international regulations. Therefore, the regulations of Kazakh law alone are often relied upon- and the position is taken that a permanent establishment has been created and therefore the foreign company must pay tax on its income in Kazakhstan. In practice, this de-facto often leads to double taxation, as the German tax authorities do not recognise the tax liability that has supposedly arisen in Kazakhstan and want to (again) tax the proceeds in Germany.

It is therefore strongly advisable to have risks in connection with the establishment of a permanent establishment examined before concluding contracts with Kazakh partners. If it is established at an early stage that a permanent establishment is being created, the foreign company can react in good time and fulfil its obligations in accordance with Kazakh law without running the risk of having to pay fines or late payment penalties for late payment of taxes. If a permanent establishment is created, a foreign company must register it within a period of 30 days⁸². The deadline begins with the actual establishment of a permanent establishment (i.e. with the commencement of operations in Kazakhstan). The Kazakh Tax Code specifies several connecting factors, the earliest of which is decisive. Possible points in time include the date of conclusion of the contract with the Kazakh partner, the date of conclusion of an employment contract or a service contract with natural persons in Kazakhstan. Failure to register may result in the loss of deductibility of expenses and possible fines.

82 § Section 220 (9) in conjunction with. § Section 76 SteuerGB.



Practical questions on the allocation of profits and costs between the holding company based in Germany and its permanent establishment in Kazakhstan under the DTA

ALLOCATION OF PROFITS GENERATED BETWEEN THE PERMANENT ESTABLISHMENT FOR TAX PURPOSES AND THE HOLDING COMPANY

When assessing the distribution of profits between the holding company based abroad and its permanent establishment in Kazakhstan, it should be unproblematic if the profits have been generated exclusively through the sole economic activity of the permanent establishment in Kazakhstan.

Art. 7 para. 1 of the DTA⁸³ stipulates that the profits of a company of a contracting state can only be taxed in that state, unless the company carries out its activities in another state through a permanent establishment located there. If the company carries out its activities in this way, the profits of the company can be taxed in the other state, but only to the extent that they can be attributed to this permanent establishment.

A different situation arises if the holding company provides the services in Kazakhstan independently and includes its permanent establishment for tax purposes in the provision of services.

With regard to such situations, Art. 7 para. 2 DTA stipulates that a permanent establishment shall be attributed the profits that it could have realised if it had carried out the same or similar activities under the same or similar conditions as an independent enterprise and had been completely independent in its dealings with the enterprise of which it is a permanent establishment. Section 651 (3) and (5) of the German Tax Code (SteuerGB), which contains the arm's length principle and refers to the provisions of the Kazakh transfer pricing law, provides for an identical regulation.

Point 1 of the Protocol to the DTA⁸⁴ stipulates that if a company sells goods or merchandise in the other contracting state through a permanent establishment or carries out a business activity through such a permanent establishment, the profits of this permanent establishment are not determined on the basis of the total amount realised by the company for this purpose, but only on the basis of the remuneration attributable to the actual sales or business activity of the permanent establishment.

83 Double taxation agreement between the Federal Republic of Germany and Kazakhstan dated 26 November 1997

84 Protocol to the Agreement of 26 November 1997 between the Federal Republic of Germany and the Republic of Kazakhstan for the avoidance of double taxation with respect to taxes on income and capital

This means that the income from the holding company based abroad from sales activities in Kazakhstan is only attributed to the permanent establishment for tax purposes if it results from the economic activity of such a permanent establishment. The profits of the company must be attributable to the activity of the permanent establishment and must have been economically caused by the activity of the permanent establishment⁸⁵. The criterion for determining whether the profit was generated by the permanent establishment is whether the profit originates from the activity of the permanent establishment or was generated by the holding company or another sub-unit of the company without the permanent establishment acting as an intermediary.⁸⁶

If the profits are attributable to the permanent establishment, it must pay corporation tax at a rate of 20 per cent including net profit tax at a rate of 15 per cent and submit the corporation tax return. According to the overriding standards of Art. 10 para. 7 DTA, a tax rate of 5 per cent is provided for the calculation of net profit tax.

CONSIDERATION OF THE EXPENSES OF THE PARENT COMPANY

A permanent establishment can claim the expenses it incurs for profit tax purposes. However, it should be noted that the corresponding deduction must be made in accordance with the general provisions of local tax legislation.

Art. 7 para. 3 DTA expressly stipulates that when determining the profits of a permanent establishment, the expenses incurred for this permanent establishment, including management and general administrative costs, are allowed as a deduction, regardless of whether they were incurred in the state in which the permanent establishment is located or elsewhere. A similar rule is provided for in Section 242 (1) of the Tax Code, according to which expenses incurred for the purpose of generating profits by a permanent establishment located in Kazakhstan are allowed as a deduction, regardless of whether such expenses were incurred in Kazakhstan or abroad.

The deduction of management and general administrative costs of a non-resident legal entity (hereinafter „apportionable costs of a non-resident legal entity“) is permitted.

In Kazakh law there are 2 methods according to which the costs can be deducted:

1. Proportional method.
1. Direct method.

The Kazakh law contains a further restriction, according to which management and general administration costs on the one hand and the operating costs themselves on the other are to be distinguished. Only costs associated with the administration of the organisation, remuneration of executives and not related to the production process are deductible (Section 208 (2) of the Kazakh Tax Code).

This regulation contradicts the standards of the DTA, according to which all expenses (and not just management and general administrative costs) can be deducted. Nevertheless, the Kazakh tax authorities adhere to this provision of § 242 para. 2 of the Kazakh Tax Code. Tax Code. It is therefore advisable to allocate the costs accordingly and to recognise them in the accounts.

We recommend applying the proportional allocation method, as there is a risk that the accounting documents confirming the expenses do not meet the accounting requirements in Kazakhstan.

⁸⁵ Vogel/Lehner, DBA, 6th edition, 2015, Art. 7 para. 42

⁸⁶ Vogel/Lehner, DBA, 6th ed., 2015, Art. 7 para. 42

The apportionable costs of a non-resident legal entity can only be deducted by the permanent establishment in Kazakhstan if the conditions of the international agreement are met and the following documents are available:

1. Notarised copies of the certificate of residence of the non-resident legal entity;
2. Copies of the financial statements of the permanent establishment in Kazakhstan;
3. Copies of the financial statements of the non-resident legal entity;
4. Breakdown of the amounts of management and general administrative expenses;
5. Copy of the audit report of the non-resident legal entity.

This means that the costs incurred must be properly documented and linked to the activities of the permanent establishment. For example, expenses that are not documented and expenses that are not related to the performance of the activity via the permanent establishment in Kazakhstan cannot be deducted.

Questions on withholding tax

REQUIREMENTS FOR WITHHOLDING TAX (EXEMPTION) UNDER THE KAZAKH TAX CODE

In addition to the question of the creation of a permanent establishment, Kazakh partners often take the view that they are obliged to withhold a withholding tax of 20 per cent and pay it to the Kazakh tax authorities. It should be emphasised here that, in addition to such an obligation for the Kazakh company as a so-called tax agent, Kazakh tax law also provides for the possibility of exempting the foreign company's income from withholding tax.



The obligations of the tax agent can be found in Section 645 of the Tax Code. In principle, the foreign company must have income that it has generated as a result of its business activities in Kazakhstan or even outside Kazakhstan in favour of or in the interests of a Kazakh company. The Kazakh company must distinguish between the following constellations before making the payment to its foreign contractual partner:

1. Are there revenues as a result of an economic activity in Kazakhstan? (cf. § 644 para. 1 Tax Code)
2. Is there revenue from the provision of financial services, auditing services, legal advisory services, etc.?
3. are revenues that the foreign company has generated as a result of its economic activity by:
 - providing identical or similar services both through its holding company abroad and its permanent establishment in Kazakhstan, or
 - providing identical or similar services together with its permanent establishment as part of a joint project?

If the tax agent establishes that the requirements of Sections 644 and 645 of the German Tax Code are met, the obligation to withhold tax at source generally arises. However, an exemption from withholding tax is possible under Section 666 (3) of the German Tax Code if the foreign company submits a tax residence certificate. The tax agent also checks whether the foreign company has established a permanent establishment for tax purposes. If the tax agent determines that a permanent establishment exists – provided that the requirements for a permanent establishment in accordance with the respective DTA are actually met – it must still withhold the withholding tax. There is no possibility of exemption from withholding tax under the Tax Code.

PRACTICE OF THE KAZAKH TAX AUTHORITIES

Please find below a description of the practice of the Kazakh tax authorities, which leads to risks for foreign and German companies operating in Kazakhstan.

According to the Tax Code of the Republic of Kazakhstan, income of foreign legal entities (including foreign investors), including income in the form of licence fees, remuneration and income from the provision of services, is subject to corporate income tax at source⁸⁷. Kazakh recipients of labour and services are so-called tax agents in relation to foreign suppliers⁸⁸. These tax agents are obliged to calculate, deduct and pay the withholding tax to the Kazakh state budget. The Tax Code provides for the procedure of withholding tax exemption or the application of a reduced withholding tax rate in accordance with the applicable agreements on the avoidance of double taxation. The provisions of these double taxation agreements (hereinafter referred to as „DTAs“) stipulate conditions and restrictions for withholding tax, which generally take precedence over the application of local tax regulations⁸⁹.

Most DTAs, including the DTA between the Federal Republic of Germany and the Republic of Kazakhstan, provide for the possibility of taxing the income of foreign legal entities in Kazakhstan if they have established a permanent establishment on the territory of the Republic of Kazakhstan. It should be noted that foreign companies may well establish several permanent establishments on the territory of the Republic of Kazakhstan due to their activities⁹⁰.

As described above, the establishment of a permanent establishment for tax purposes requires a number of conditions to be met by the foreign company. It should be noted that German companies have also frequently opened branch offices (subsidiaries or representative offices) in Kazakhstan in order to realise certain projects. In the past, this was for reasons of foreign exchange law or residence law, which have now largely become obsolete.

87 Art. 645 para. 1 Tax Code

88 Art. 653 para. 1 Tax Code

89 Art. 4 para. 3 of the Constitution of the Republic of Kazakhstan, Art. 2 para. 5 of the Tax Code

90 Art. 220 para. 9 Tax Code

In the event that a non-resident earns income from the provision of works or services under the same or related projects, the tax agent (i.e. the local recipient of services) must determine whether the actions of the foreign company have led to the establishment of a permanent establishment in Kazakhstan in accordance with Art. 666 para. 2 of the Tax Code. If the foreign company has established a permanent establishment, the tax agent may not exempt the foreign company from withholding tax or apply the reduced tax rate provided for by international treaties when making payment to the foreign company⁹¹. However, if the foreign company has not established a permanent establishment, the tax agent is authorised to exempt it from withholding tax or to apply a reduced tax rate to the payment to this foreign entrepreneur.

The tax authorities of the Republic of Kazakhstan often interpret the provision of Art. 666 of the Tax Code as a general prohibition of exemption from withholding tax if a foreign legal entity has already registered a permanent establishment (including a branch as a branch office) on the territory of the Republic of Kazakhstan in the past, referring to the provisions of Art. 666 para. 2 sentence 2 of the Tax Code, which reads as follows:

In the case of the realisation of income by a non-resident as a result of the provision of services or the performance of works within the framework of one or related projects, the tax agent shall determine whether the non-resident has established a permanent establishment for the purposes of applying this provision, inter alia, on the basis of the contract (agreement) for the provision of services or works and the documents referred to in paragraph 5 of this Article.

If it is determined that the non-resident has [established] a permanent establishment in the Republic of Kazakhstan⁹², the tax agent is not entitled to apply provisions of the international treaty on the exemption of income [from withholding tax]⁹³ of the non-resident in the Republic of Kazakhstan.

The Kazakh tax authorities are of the opinion that the provisions of the DTA regarding withholding tax exemption may not be applied even if a foreign company merely has a registered permanent establishment (e.g. a branch office) in Kazakhstan, which was not involved in any way in a related or the same project of this investor. The fact whether the activity of this foreign company led to the formation of a new permanent establishment or not is irrelevant.

The tax authorities do not consider the factual circumstances of each individual case and do not take into account the circumstances of whether or not such a permanent establishment was used by the foreign company in the provision of services in any functional way. In addition, the tax authorities are of the opinion that in the case of the creation of a permanent establishment, the application of reduced tax rates for withholding tax in relation to remuneration and licence fees, which are taken into account in international agreements, is also not possible. In doing so, the tax authorities refer to the wording of Art. 666 para. 2 of the Tax Code, without taking into account the meaning and purpose of the entire provision of Art. 666 and Section 75 of the Tax Code⁹⁴.

The opinion of the Kazakh tax authorities affects not only the income of companies based abroad from their business activities, but also their income in the form of remuneration from loans granted and secured by state guarantees.

91 Art. 666 para. 2 Tax Code

92 Addition of the author

93 Addition of the author

94 The heading reads „Special provisions on the application of double taxation agreements“



However, there is an emerging trend that most court decisions in the future will continue to be predominantly in favour of the tax authorities, which in turn will lead to possible risks of double taxation.

Please find below a brief legal assessment of the practice of withholding tax in Kazakhstan.

Withholding tax on income from entrepreneurial activity

According to the DTA, the operating profit of a company of a contracting state (in this case Germany) is only taxed in that state if the company does not carry out its business activities in the other contracting state through a permanent establishment located there⁹⁵. If the company carries out its business activity through the permanent establishment in the other state, the operating profit can be taxed in the other state (i.e. in the Republic of Kazakhstan), but only to the extent attributable to this permanent establishment. The profits of this permanent establishment are not determined on the basis of the total contract amount, but by determining the extent to which the permanent establishment is entitled to a portion of the remuneration in relation to its business activities⁹⁶.

This means that withholding tax is generally only possible if the income can be allocated to the permanent establishment or if it is not possible for the tax agent to separate the part of the income attributable to the business activity of the permanent establishment from the total amount of profits of the foreign legal entity.

It should be noted that the Kazakh Tax Code provides for the handling of a number of different cases with regard to withholding tax, which we would like to present below:

- the foreign company has a registered permanent establishment that was not involved in the project of the parent company (see Art. 645 Tax Code);
- the foreign company carries out its activities together with its registered permanent establishment (Art. 653 para. 1 Tax Code); and
- the foreign company establishes a new permanent establishment as part of its activities in the Republic of Kazakhstan (Art. 666 para. 2 sentence 1 Tax Code).

Accordingly, the Kazakh Tax Code distinguishes between regulations on withholding tax in cases where foreign companies generate their profits in Kazakhstan through the permanent establishment⁹⁷ and cases where foreign legal entities generate income without these profits having to be allocated to the permanent establishment. Kazakh tax legislation thus contains clear provisions as to whether and, if so, when, which operating profits and how these operating profits are subject to withholding tax.

This becomes clear, for example, when considering the provision of Art. 653 of the Tax Code. This provision regulates the withholding tax of foreign legal entities that carry out their activities in the Republic of Kazakhstan together with their permanent establishment. According to this provision, the local tax agent (recipient of services) must withhold and pay the withholding tax without deduction only if the following two conditions are cumulatively met:

1. Absence of a contract with the permanent establishment of a foreign company or a permanent establishment of a foreign company without a branch or representative office having been opened.
2. Absence of an invoice for goods, work, services issued by the permanent establishment (representative office or branch).

95 Art. 7 para. 1 DTA

96 No. 1 of the Additional Protocol to the DTA

97 Sections 72-73 of the Tax Code

It follows from the Kazakh Tax Code itself that the mere existence of a permanent establishment (possibly registered in the past) cannot lead to comprehensive withholding tax on all income of the foreign legal entity. In this context, the provision of Art. 666 para. 2 sentence 2 of the Tax Code must also be interpreted, which requires the tax agent to determine the fact of the establishment of the permanent establishment on the basis of the contractual documents of the foreign company and other documents mentioned in paragraph 5 of Art. 666 of the Tax Code.

It should also be noted that a registered permanent establishment in the Republic of Kazakhstan is regarded as a separate independent taxable entity. If foreign companies provide their services together with their permanent establishment and thus a permanent establishment⁹⁸ in Kazakhstan, special procedures apply to determine the profit share of the permanent establishment on the one hand and the profit share attributable to the parent company on the other. The principle is that in such a case, the permanent establishment of the foreign company must be allocated the profit that the permanent establishment could have received if it were a separate independent company⁹⁹.

At the same time, the existence of a permanent establishment (registered in the past) cannot per se lead to a ban on exemption from withholding tax. The above-mentioned provisions of the Tax Code (Art. 666 para. 2 sentence 2 Tax Code) and the DTA indicate that if foreign companies carry out activities in the Republic of Kazakhstan within the framework of individual projects together with their own permanent establishments, the local tax agent must determine the establishment of a (new) permanent establishment as part of an overall assessment, i.e. on the basis of an assessment of the activities of these foreign companies. If the activity of the foreign company has not led to the establishment of a new permanent establishment, the tax agent has the right to apply the provisions of the international agreement.

In practice, the Kazakh tax authorities often apply the provisions of Art. 666 of the Tax Code to the mere existence of a permanent establishment without determining whether the registered permanent establishment was involved in the activities of the foreign company or not. This is contrary to the provisions of the international DTA and local tax law.

Withholding tax on interest payments

In addition to the withholding tax on profits from the business activities of foreign companies, the Kazakh tax authorities also apply Art. 666 of the Tax Code in relation to interest payments within the meaning of Art. 7 of the DTA to foreign companies.

In this context, we would like to draw your attention to the special provisions of the DTA between the Federal Republic of Germany and the Republic of Kazakhstan. This DTA not only provides for the application of a reduced withholding tax rate for interest payments, but also for a possible exemption from withholding tax. According to Art. 11 para. 3 of the DTA between the Federal Republic of Germany and the Republic of Kazakhstan, interest payments made on a loan guaranteed by a „Hermes cover“, i.e. loans whose repayment is guaranteed by the government of the Federal Republic of Germany by way of „Hermes cover“, are completely exempt from withholding tax. Consequently, the claim to withholding tax does not arise in the first place. Incidentally, the provision of Art. 667 para. 1 Tax Code also contains a provision with the same content. The application of Art. 666 Para. 2 Tax Code would therefore not be lawful, as it would contradict the DTA between the Federal Republic of Germany and the Republic of Kazakhstan as well as the provisions of the Tax Code in Art. 667 Para. 1 Tax Code.

98 Art. 651 Tax Code

99 Art. 651 para. 1 Tax Code



Based on the fact that the DTAs of other European countries with the Republic of Kazakhstan contain similar provisions, Art. 666 of the Tax Code should not apply to loan interest that is guaranteed by state guarantees from other European countries. As a rule, these interest payments should therefore also be completely exempt from Kazakh tax.

RISKS IN PRACTICE

In the following, we would like to outline the risks for foreign investors in connection with the legal practice of the Kazakh tax authorities.

Continuous impossibility of offsetting taxes paid in Germany and other European countries

The tax authorities of Kazakhstan often refer to the provisions of the DTA, which provide for the possibility that taxes paid in Kazakhstan could be credited in other countries. However, it should be noted that there are provisions in German tax law, for example, that make it impossible for German taxpayers to offset taxes paid in another country (including Kazakhstan) if that country did not have the unlimited right of taxation to receive them¹⁰⁰.

In this respect, there is a risk that foreign companies would be subject to de facto double taxation both in Kazakhstan and in other countries if the provisions of the DTAs are not applied or not applied correctly.

With regard to the procedure for tax refunds

The provisions of the DTAs and the tax laws of the Republic of Kazakhstan provide for the possibility that withholding tax paid in the Republic of Kazakhstan must be refunded to foreign companies if certain conditions are met¹⁰¹. In practice, a refund procedure takes a long time and in almost all cases leads to legal disputes between foreign companies and local tax authorities, which are usually decided in favour of the foreign companies. In addition, there are considerable risks, be it currency risks that foreign companies bear due to the considerable duration of the preliminary review and court proceedings or a reduction in the liquidity of foreign companies.

¹⁰⁰ Cf. section 26 of the German Corporation Tax Act

¹⁰¹ Art. 672 Tax Code



Instrument of tax assessments

In practice, foreign companies provide their services in Kazakhstan together with their local subsidiaries. In most cases, these local subsidiaries are tax agents in relation to the profits of foreign parent companies. Dividend payments are subject to a reduced tax rate. In consistent application of the DTAs and local Kazakh law, the profits to be paid to the holding company are correctly not subject to withholding tax.

Kazakh tax authorities have the option of issuing a tax assessment notice to the tax agent regarding the (alleged) illegality of the exemption from withholding tax. If the tax agent takes a different view than the tax authorities, this can lead to legal consequences involving the freezing of bank accounts and other restrictions on the disposal of assets¹⁰².

Based on the application practice described above, we recommend carrying out a tax audit focusing on the identification of withholding tax risks. Such an audit serves to recognise potential risks for your subsidiaries in the Republic of Kazakhstan in good time. In this context, it makes sense to examine the advisability of restructuring the contractual relationships between subsidiaries and holding companies and to analyse in detail whether it makes sense to discontinue the activities of any existing branches of the parent subsidiaries or to close them completely.

Issues relating to the taxation of surpluses from the financing of representative offices by the holding company domiciled abroad

The following section discusses tax issues relating to the financing of representative offices by the holding company based in Kazakhstan. According to the definition in Section 43 (2) of the Kazakh Civil Code (hereinafter referred to as the „Civil Code“ or “CC”), the term „representative office“ is understood to mean a dependent branch of a legal entity located outside its registered office that represents the interests of the legal entity.

Due to the lack of the status of an independent legal entity, a representative office is generally not in a position to pursue independent entrepreneurial activity with the intention of generating profit and therefore does not generate any profits. Rather, in most cases it is established to carry out auxiliary activities and is therefore maintained by the holding company. A representative office receives funds from the holding company to finance these activities.

102 Art. 116 para. 1 Tax Code

For years, the Kazakh tax authorities have been of the opinion that funds not utilised at the end of the tax period are taxable in Kazakhstan. The Committee for State Revenue of the Kazakh Ministry of Finance has published a corresponding explanation, according to which the funds provided by the holding company in favour of the representative office are to be regarded as revenue for the purposes of corporate income tax. Expenses for the maintenance of the representative office are authorised for tax deduction. The funds not utilised at the end of the tax period (calendar year) are to be taxed as profit of the representative office.

This view of the Kazakh Ministry of Finance raises serious concerns due to the applicable standards of the double taxation treaties, the Kazakh Tax and Civil Codes and the Kazakh Law on Accounting and Financial Statements.

Legal entities established in Kazakhstan and legal entities established under the laws of foreign countries with a principal place of administration („effective place of administration“) are considered to be resident in Kazakhstan. A tax liability can only arise in the case of residency. The main place of administration is considered to be the actual registered office, i.e. the place of the main administration (registered office of the management or analogous bodies), where fundamental business decisions regarding the management, administration and control of the company are made and realised.

As a rule, a power of attorney is issued to the head of a representative office, which restricts his powers of action to activities of a preparatory nature and auxiliary activities pursuant to Article 5(4) of the DTA. As a result, the head of a representative office has no authority to make decisions on the business activities, i.e. profit-making intentions, of the representative office. Consequently, decisions on business activities are made by the management, whose head office is not located in Kazakhstan, but abroad. Therefore, the representative office cannot be considered a resident of Kazakhstan. However, this is a prerequisite for exercising a right of taxation in Kazakhstan.

In order for a right of taxation to arise, a company must also carry out an economic activity through its permanent business establishment in Kazakhstan.

However, the Kazakh Tax Code provides that the operation of a representative office in Kazakhstan by a non-resident in the form of activities of a preparatory nature as well as auxiliary activities that differ from the main activity of the non-resident does not lead to the establishment of a permanent establishment in Kazakhstan as long as activities of this kind are not carried out for more than 3 years.

Activities of a preparatory nature and auxiliary activities may only be carried out in favour of the non-resident, not for third parties. Activities of a preparatory nature and ancillary activities are defined as:

- Use of the facility exclusively for the purpose of storing and/or displaying goods and merchandise of the entrepreneur;
- Maintenance of the facility exclusively for the purchase of goods or merchandise without their sale;
- Maintaining the facility solely for the purposes of collecting, processing and/or disseminating information, advertising or researching the market for goods or merchandise, as well as work and services of the non-resident, if these are not his main activities.

Consequently, a representative office cannot be regarded as a permanent establishment if it does not carry out the above-mentioned activities for longer than 3 years. If a representative office is operated for longer than 3 years, Kazakh law assumes that the activity extends beyond the duration of a representative office, which results in a tax liability. Kazakhstan has no right of taxation if the representative office exists for less than three years.

NO RIGHT OF TAXATION UNDER SECTION 220 (11) TAX CODE

The Kazakh tax authorities often refer to the provisions of Section 220 (12) of the Tax Code to justify their view on the taxation of surpluses from a representative office.

These regulations state that the regulations for permanent establishments apply accordingly to the representative office through the performance of activities that do not lead to the formation of a permanent establishment in accordance with Section 220 (11) of the German Tax Code and the regulations of the DTA.

In this context, according to the letter from the Committee for State Revenue of the Ministry of Finance (hereinafter referred to as „CSR“) dated 28 April 2015 and the reply from the Minister of Finance¹⁰³, the representative office of a foreign legal entity must submit a Kazakh tax return in accordance with Form 100.00, in which the total annual income in the form of financing of the representative office by the holding company and the deductible costs must be reported. In the opinion of the CSR, the funds received by the holding company must be taken into account in item 100.00.04 „Other income“ of the corporate income tax return. If the total annual revenue exceeds the total tax deductions, corporation tax (including net profit tax) must be paid on this¹⁰⁴.


Section 220 (11) of the Tax Code also states that the representative office is authorised to apply the provisions of the DTA with regard to exemption from taxation.

ABSENCE OF TAXABLE INCOME

Pursuant to Section 644 (1) No. 34 of the Tax Code, other revenues of a non-resident that are realised as a result of performing an activity in Kazakhstan are taxable. As the term „income“ is not defined in the Tax Code, the term „income“ as defined in the Law on Accounting and Financial Statements and in IFRS should be applied accordingly for the purposes of taxation.

The provisions of Section 644(1)(34) of the Tax Code may not apply if the financing of the representative office by the principal company does not meet the definition of revenue set out in Section 13(2) of the Accounting and Financial Statements Act. Section 13(2) of the Accounting and Financial Statements Act defines revenue as an increase in economic benefits within an accounting period in the form of inflows or increases in assets and decreases in liabilities that lead to an increase in equity and differ from an increase through contributions by persons participating in equity.

¹⁰³ Answer of the Minister of Finance of 11 March 2015 to the question of 24 February 2015 294912 (e.gov.kz)

¹⁰⁴ See the answer of the Chairman of the CFE Mr Ergozhin D.E. to the question №295505/1  21.04.15, link: <http://blogs.e.gov.kz/ru/blogs/kgd/questions/296469>

Accordingly, the inflow of funds in the form of financing by the principal company within the same legal entity does not constitute proceeds, as increases through contributions by persons participating in equity are explicitly excluded. Financing by the holding company does not constitute other income and can therefore not be recognised under total annual income in a Kazakh tax return in accordance with Form 100.00. The same applies to expenses incurred by the representative office if these are not related to the realisation of income in accordance with Section 100 (1) of the Tax Code.

CONCLUSION

In view of the above, it should be noted that the opinion of the tax authorities based on the provision of § 644 para. 1 no. 34 of the Tax Code, according to which the funds paid by the holding company based abroad to finance the representative office in Kazakhstan are to be regarded as taxable income of the representative office, constitutes a violation of the provisions of the DTT.

At the moment of this article, this position of the tax authorities has not changed. An additional obligation to register was introduced for taxpayers from foreign countries who receive funds from international and foreign organisations¹⁰⁵. As such a declaration obligation only applies to persons who carry out certain activities (e.g. legal advice, research into public opinion, collection, analysis and dissemination of information - unless the activities are carried out for business purposes), this issue will not be discussed further in this article.

In the event that the tax authorities include the funds paid to finance the representative office in Kazakhstan in the total annual income of the representative office, we recommend contesting such decisions in court and also initiating a mutual agreement procedure in accordance with Art. 25 DTA. It is also advisable to recognise the funds not used by the representative office as advances in the accounts in order to avoid risks and controversial situations. In this case, the reimbursement of funds not spent by the representative office and recognised as advances in the accounts will not have any tax consequences.

In conclusion, it should be noted that the legal interpretation of the Kazakh tax authorities de-facto leads to a double taxation, at least with regard to German companies operating in Kazakhstan in the form of a representative office.

¹⁰⁵ Regulated by §§ 14, 20, 77, 557, 627 and the decree of the Minister of Finance dated 19 October 2016 No. 553.

Tax benefits

SPECIAL ECONOMIC ZONES

In Kazakhstan, there are also tax benefits for companies that are registered as participants in one of the special economic zones.

A special economic zone is a part of Kazakhstan's territory in which there is a special legal regulation for carrying out investments in priority economic sectors. There are currently 13 special economic zones in Kazakhstan, each with a different sectoral focus. The following economic sectors are included: Construction, transport, recycling, electronics production, pharmaceutical production, chemical products, metallurgy and others.

In all 13 SEZs, exemptions are generally granted from corporation tax, in some cases from VAT and from property tax. In some special economic zones, an investor can be exempted from paying customs duties. The legal basis can be found in sections 708-710 of the Kazakh Tax Code, among others. For preferences to be granted, there must be more than just an agreement on economic activity in the respective special economic zone. There are other criteria that are linked to the granting of preferences. These must be strictly adhered to, as otherwise the company must retroactively refund all preferences granted.

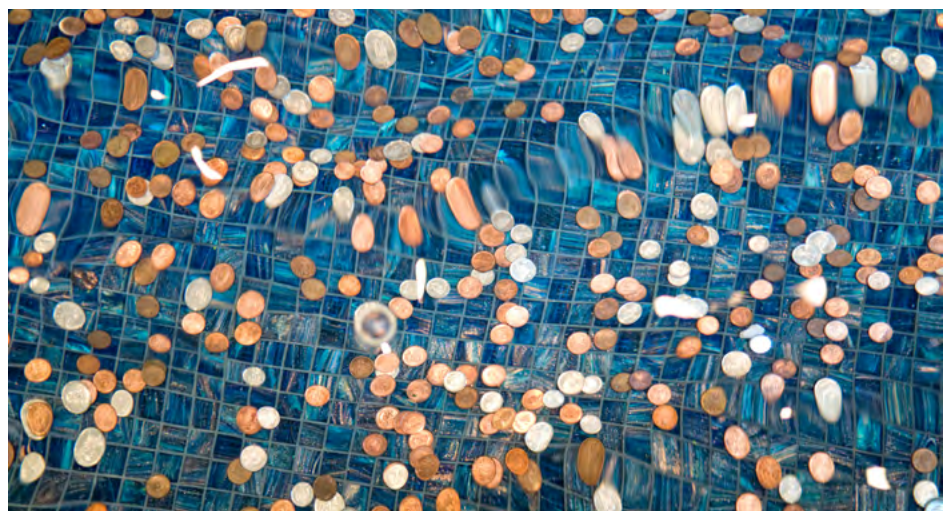
TAX BENEFITS IN ACCORDANCE WITH THE BUSINESS CODE

The Republic of Kazakhstan supports investments by granting state preferences and (or) by granting stability guarantees when amending the tax legislation of the Republic of Kazakhstan. The section „Support under the Business Code of the Republic of Kazakhstan“ already contains an overview, so this section follows on from this.

The Kazakh legislator distinguishes between different types of investment agreements when granting preferences to, among others, legal entities, including legal entities with foreign participation. For the sake of clarity it should be noted that the term „investment agreement“ refers to all agreements between the investor and the Kazakh state under Kazakh investment law. Since there are a number of different types of investment, each of which requires the conclusion of an agreement in the broad sense, synonyms are used here to describe the specific type of investment project in question.

AGREEMENT ON A (SIMPLE) INVESTMENT PROJECT

In the case of a (simple) investment project, only certain benefits can be claimed, such as exemption from customs duties on the import of technological equipment, parts and components, raw and/or auxiliary materials and the granting of state subsidies in the form of land, buildings, vehicles, etc. Generally, no tax benefits are granted.



PRIORITY INVESTMENT PROJECT

When realising a priority investment project, the investor can claim the following benefits in addition to the above-mentioned benefits, with the exception of VAT exemption.

- Reduction of (exemption from) corporate income tax;
- Application of coefficient 0 to the property tax rate¹⁰⁶ ;
- Exemption from property tax¹⁰⁷ ;

The exemption from corporate income tax and property tax is granted for a maximum of 10 years, the exemption from property tax for a maximum of 8 years.

AGREEMENT ON INVESTMENTS

Article 295-2(3) Business Code stipulates that the investment agreement may determine the types of investment preferences, the conditions and the procedure for granting them. Further details are regulated by the Ministerial Decree on the conclusion, amendment and termination of investment agreements.¹⁰⁸ The provision also contains a reference to the provisions of the Tax Code regarding the granting of tax preferences. The provisions of Sections 712-1 to 712-3 of the Tax Code set out the taxation rules for those who have concluded an investment agreement.

Section 712-2 of the Tax Code directly defines the deadlines for the application of the individual tax benefits. Section 712-2 sets the following deadlines for the application of the following tax preferences:

- A 100 per cent reduction in corporate income tax is applied from 1 January of the year in which the investment agreement was concluded and is valid for a maximum of 10 years; however, the period only begins on 1 January of the year following the conclusion of the agreement. For example, if the agreement is signed on 15 June 2023, the investor can (theoretically) already enjoy tax benefits in 2023. However, these end on 31 December 2034.
- The exemption from property tax is applied from the 1st day of the month in which the agreement was concluded and also applies for a maximum of 10 years; the calculation of the ten-year period is carried out in the same way as for corporation tax (see above).
- Property tax is levied from the first day of the month in which the first asset is recognised as part of the fixed assets in accordance with international accounting standards. This applies for a maximum of eight years. The eight-year period is calculated in the same way as for corporation tax and property tax (see above).

ADVANTAGES FOR INVESTORS IN THE „AIFC“

The objectives of the establishment of the Astana Financial Centre (AIFC) have already been discussed above. The „AIFC“ is subject to a special legal tax regime in the financial sector, which is defined by the Constitutional Law of the Republic of Kazakhstan No. 438-V „On the Astana International Financial Centre“ dated 7 December 2015. This regime offers certain tax benefits to AIFC participants.

¹⁰⁶ In Kazakh laws, the application of the coefficient 0 is offered in several places instead of a complete tax exemption. De facto, the taxpayer must calculate the tax base, notify the Kazakh tax authorities and at the same time declare the application of the coefficient 0 in order to obtain a tax exemption in the final result. The result is a 100% tax exemption

¹⁰⁷ See previous footnote: in Kazakh laws, the application of a coefficient of 0 is offered in several places instead of a complete tax exemption. De facto, the taxpayer must calculate the tax base, notify the Kazakh tax authorities and at the same time declare the application of the coefficient 0 in order to obtain a tax exemption in the final result. The result is a 100% tax exemption

¹⁰⁸ Ordinance of 17 March 2022 regarding no.: 11-1-4/113

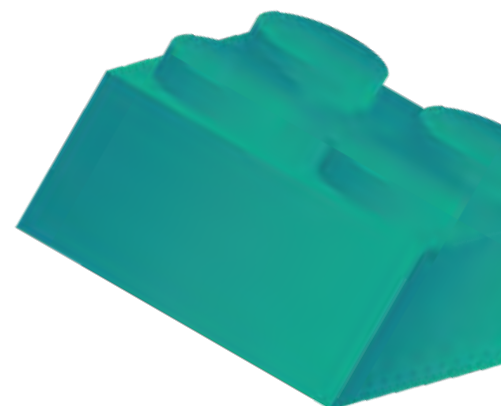
However, most of the benefits require the respective participant to provide financial services. The aim here is to further develop the financial services sector. The list of services recognised as financial services includes more than 30 types of services. The tax benefits are banking, brokerage, commercial and insurance services. However, the other sectors are also relevant for AIFC members who receive income from legal, auditing, accounting and consultancy services. AIFC members who do not provide these services receive less significant tax benefits. Tax exemptions apply until 1 January 2066.

The table below includes the corresponding tax benefits:

PARTICIPANTS	Exemption from corporate income tax	Exemption from sales tax	Property tax	Property tax exemption	Exemption from withholding tax on dividends and capital gains for shareholders of an AIFC participant company
AIFC participants who receive income from financial services	✓	✓	✓	✓	✓
AIFC participants who receive income from consulting, legal, auditing and accounting	<i>Only on income from the provision of services to an AIFC participant</i>	-	✓	✓	✓
Other AIFC participants that do not provide the aforementioned services		-	-	-	✓

Transfer pricing

The Law on Transfer Pricing, also known as the Transfer Pricing Law, is an integral part of international tax law. The law on transfer pricing exists in Kazakhstan. As in other countries, it regulates the pricing of transactions between affiliated companies. The aim is to ensure a fair and market-based valuation of these internal transactions in order to prevent the shifting of profits to low-tax countries and avoid double taxation.





Transfer prices are the prices charged for goods, services, rights or capital between affiliated companies in a multinational group. This internal pricing system can have an impact on the tax burden of the companies involved, as it directly influences the profits recognised in the various countries. Given the global reach of many companies, the appropriate determination of transfer prices is of great importance to the tax authorities.

Kazakh law requires that transfer prices comply with the arm's length principle. This means that the conditions and prices between affiliated companies must correspond to the same conditions that would also apply between independent companies under normal market conditions. To ensure this, various methods are used to assess transfer prices, such as the price comparison method, the resale price method or the cost-plus method. As in other countries, companies in Kazakhstan are obliged to keep comprehensive documentation on their transfer prices and to submit this to the tax authorities on request. This is intended to create transparency and enable the tax authorities to verify the appropriateness of prices.

Violations of the law on transfer pricing can lead to tax adjustments, penalties and interest. In recent years, many countries have tightened their laws and regulations in this area in order to curb tax avoidance by multinational companies. In particular, Kazakhstan, like many other countries, has adapted its regulations as part of the OECD's initiatives against profit shifting and erosion of the tax base (BEPS).

The Transfer Pricing Law regulates business relationships between companies arising from transfer pricing in order to prevent losses of state revenue in international business activities and transactions related to international business activities (hereinafter referred to as „international business“). The Kazakh Transfer Act is therefore applicable if there is a so-called international transaction between the parties.

According to the legal definition of Section 2 No. 31 Transfer Pricing Law, an international transaction generally exists in the case of export and import transactions. Other cases are service and work contracts in which a person not resident in Kazakhstan provides services to companies resident in Kazakhstan.

DOCUMENTATION OBLIGATIONS PURSUANT TO SECTION 7 OF THE TRANSFER PRICING LAW

§ Section 5 (3) no. 4) Transfer Pricing Law stipulates that the contracting parties in international transactions are obliged to keep the documentation confirming the market price and to submit it to the tax authorities within 90 calendar days upon request.



METHODS OF TRANSFER PRICING

The following methods of transfer pricing are used when carrying out transfer pricing controls.

Comparable uncontrollable price method (price comparison method)

This method provides for a comparison of the price applied by the contracting parties with the usual market prices in comparable economic circumstances, taking into account the permissible deviation (differential).

Cost Plus Method

When applying this method, the market price is calculated as the sum of the actual costs incurred and the profit mark-up. This method is generally used when valuing goods and services that are sold from one affiliated company to another within a group. The cost plus method is particularly suitable for situations in which a company acts primarily as a producer or service provider for other parts of the group.

In addition to determining the cost base, determining the profit mark-up is very important. The profit mark-up is usually determined on the basis of comparative data. An attempt is made to find a rate that corresponds to what independent companies would apply in comparable transactions. This can be done by analysing profit margins of similar transactions between independent third parties or by industry averages.

Resale Price Method

The resale price method is another method for determining transfer prices within internationally operating groups. It is primarily used when a company purchases products from an affiliated company and then resells them to independent third parties. The first step is to determine the price at which the product is sold to an independent third party. This price should have been realised under normal market conditions. A profit margin is then deducted that the reselling company would normally expect for its activities. This profit margin should take into account the reseller's functions, risks and assets as well as the value of the services it provides. The determination of this margin is often based on the analysis of profit margins achieved by independent companies in comparable transactions.

The challenge in applying the resale price method lies in determining an appropriate and customary profit margin. This margin must be representative of the functions performed by the company and reflect the risks associated with the transaction (such as exchange rate fluctuations of the Kazakh Tenge against the Euro) and costs (most recently high transport costs as a result of the war of aggression against Ukraine). A precise analysis of comparable independent transactions is therefore essential.

Profit distribution method

The profit split method is a method for determining transfer prices that is used in particular in complex multinational groups or for unique transactions. This method is primarily used when affiliated companies are jointly involved in the production of goods or services or when transactions cannot be easily valued using market comparisons.

The principle of the profit split method is to split the total profit from a transaction or a group of transactions between the companies involved according to their respective contributions. The method aims to divide the profit in the same way as independent companies would do under comparable circumstances.

This method is particularly useful when the companies involved are closely intertwined and it is difficult to value individual transactions for transfer pricing purposes. However, the challenge lies in the complexity of analysing and evaluating the contributions of the individual companies.

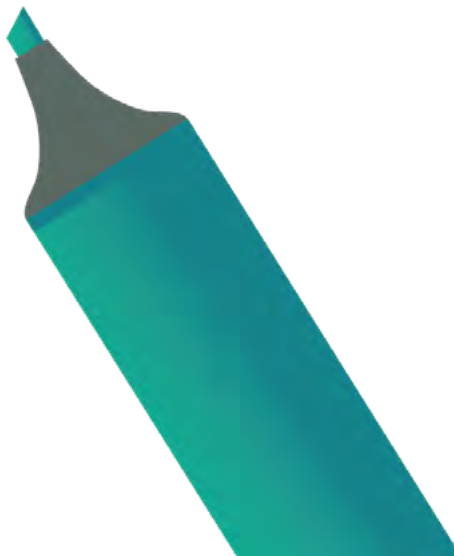
Transactional Net Margin Method (TNMM)

The net profit method is a common method for determining transfer prices. It is similar to the cost plus method and the resale price method, but focuses on the net profit margin that a company realises from a particular transaction or group of transactions. The method is often used when a direct price comparison method is not applicable, for example due to the uniqueness of the transactions or the lack of comparable market data.

A special feature of the Kazakh Transfer Pricing Law is that, according to Section 12 (2) of the Transfer Pricing Law, one of the other methods may only be used if the application of the price comparison method is not possible. These methods include the cost-plus method, the subsequent realisation price method, the profit split method and others. As a result, when determining the arm's length price, German companies must first establish and document that the price comparison method cannot be applied. If a company - without documenting that the price comparison method cannot be applied to the business relationships - immediately applies another method, such as the cost-plus method, this harbours considerable risks. In its decision, the Kazakh Supreme Court confirmed the provisions of Section 12 (2) of the Transfer Pricing Law.

§ Section 18 of the Kazakh Transfer Pricing Law describes which sources of information are used to determine market prices. It specifies a sequence: officially recognised market price sources are used first, followed by stock exchange listings, data from state and foreign authorities on prices and expenses, and finally information from transfer pricing software and other sources. In addition, only the use of officially recognised sources and stock exchange listings is permitted for transactions in tax havens. There is a list of market price sources defined by the Kazakh government¹⁰⁹, most of which provide information on prices for crude oil, petroleum products, non-ferrous metals and the prices of other commodities.

¹⁰⁹ See the Decree of the Deputy Prime Minister - Minister of Finance of the Republic of Kazakhstan dated 12 July 2023 № 757 „On Approval of the List of Officially Recognised Sources of Information on Market Prices“



RISKS IF DEVIATIONS FROM THE MARKET PRICE ARE IDENTIFIED

If the Kazakh tax authorities identify a discrepancy, the tax authorities are authorised to make a so-called correction of the tax base in accordance with Section 10 Transfer Pricing Law.

The same applies to the profit allocation between the parent company and a permanent establishment for tax purposes, which we have already mentioned in this publication. The core of the Transfer Pricing Law also applies in this respect, namely the so-called arm's length principle. This also applies to the relationship between the permanent establishment and the parent company of a company.

In Germany, there are certain regulations for the delimitation of profits between a permanent establishment and its parent company. These regulations are enshrined in the Foreign Tax Act (AStG) and the Ordinance on the Apportionment of Permanent Establishment Profits (BsGaV). The BsGaV implements the „Authorised OECD Approach“ (AOA) in detail in German law. According to this concept, a permanent establishment is treated as an independent subsidiary in relation to its holding company. The profit of a permanent establishment is determined by applying a fiction of full independence. Profits are distributed in two phases. In the first stage, assets, business opportunities, risks and capital are allocated to the permanent establishment based on a functional and risk analysis. In the second step, the result of the permanent establishment is determined by using transfer pricing methods.

Insofar as German companies usually use the cost-plus method in the second step, the provisions of Section 12 (2) Transfer Pricing Law bear risks of double taxation. The German tax authorities will refer to the principles of the permanent establishment profit allocation ordinance and will (want to) set the taxable profit of the permanent establishment rather low, e.g. for routine services, usually using the cost-plus method. The Kazakh tax authorities, on the other hand, will want to apply the price comparison method.

When realising projects via a permanent establishment for tax purposes, German companies are therefore advised to accurately calculate the costs of transfer pricing documentation and any tax risks in connection with the Permanent Establishment Profit Sharing Regulation at the start of the project.

SANCTIONS VIOLATIONS OF THE TRANSFER PRICING LAW AND IN ACCORDANCE WITH THE CODE OF ADMINISTRATIVE OFFENCES.

In the event of a price discrepancy, the tax authorities may apply Section 278 of the Code of Administrative Offences (Reduction of tax and other mandatory contributions to the state budget), according to which administrative fines may be imposed in the amount of up to 50 per cent of the calculated tax amount of other mandatory contributions to the budget.



Sanctions against Russia and effects on German companies in Kazakhstan

The adoption of extensive sanctions packages by the EU in response to the Russian war of aggression in Ukraine and the annexation of Crimea in 2014 in violation of international law cannot be ignored by any participant in today's economic trade. The economic opportunities for interaction with Russian companies and individuals have been comprehensively restricted. The current economic policy circumstances only make Kazakhstan, as the economic centre of Central Asia, even more interesting for international economic activities.

In view of the inherent accusation of circumventing the sanctions via Central Asia, it is immensely important to identify any risks for the liability of German management for the actions of local Kazakh management in Kazakh subsidiaries.

As the EU sanctions are directed against Russia and Belarus, it is first necessary to determine how sanctions violations are possible in Kazakhstan. As a direct result of the sanctions, exports from Russia's neighbouring states to Russia increased coherently:¹¹⁰ Kazakhstan told the US Secretary of State shortly after the start of the war that it would not participate in circumventing the sanctions.¹¹¹

Nevertheless, Kazakhstan is part of the Eurasian Economic Union with Russia, which initially facilitated circumvention through loopholes in customs documentation when goods were transhipped in Kazakhstan.¹¹² However, the Kazakh government gave assurances that these loopholes would be closed. From a sanctions law perspective, the so-called „prohibition of onward transfer“ and the „prohibition

110 RND (Niesmann): Fight against sanction-breakers: Why not like this?, available at:

<https://www.rnd.de/wirtschaft/sanktionen-gegen-russland-wie-gelingt-der-kampf-gegen-sanktionsbrecher-6DAIVLTR3JFQRF25JMVCE4A.html>.

111 DAZ (n.d.): US Secretary of State Blinken visits Kazakhstan, available at: <https://daz.asia/blog/us-aussenminister-blinken-besucht-kasachstan/>.

112 GTAI (Appel): Kazakhstan blocks sanctions evasion, available at:

<https://www.gtai.de/de/trade/eawu/zoll/kasachstan-blockiert-die-umgehung-von-sanktionen-901810>.

of circumvention“ are particularly relevant.¹¹³ According to the latter, German companies must examine their economic transactions to determine whether the transactions favour persons and companies listed on the sanctions list.¹¹⁴ Official transparency registers are not sufficient to make a conclusive assessment.¹¹⁵ The same also applies to the supply of goods and the provision of services that have been restricted or completely prohibited by the sanctions packages. In this respect, qualified individual counselling is always required for a conclusive assessment.

The risk of a sanction violation must not be disregarded. Violations of sanctions are subject to penalties and fines.¹¹⁶ The penalties and the scope of the fines are listed in §§ 17 ff. AWG. The minimum penalty is between one year (Section 17 AWG) and three months (Section 18 AWG), depending on the offence committed.

In addition, liability under civil law for managing directors is also relevant. For the managing director of a GmbH, Section 43 II GmbHG threatens the managing director who breaches „obligations“ with internal liability under company law. Members of the management board of a joint stock corporation who disregard the diligence of a prudent and conscientious manager are threatened with liability under Section 93 II 1 AktG. Even if the wording of the two provisions differs, their systematics are largely congruent in this context.

If a company violates EU sanctions as a result of delivering goods to Kazakhstan that subsequently reach Russia without the necessary due diligence, this can lead to corresponding internal liability of the managing directors towards the company. Relief through the so-called business judgement rule is largely unlikely due to the obvious illegality of circumventing sanctions.

Compliance with sanctions is therefore a key aspect of economic activity in Central Asia. German companies must ensure that they fulfil compliance requirements in relation to sanctions imposed by Western countries and implement effective risk management strategies.

COMPLIANCE REQUIREMENTS

The compliance requirements cover several key areas. Firstly, due diligence (exercising due care in business dealings) is crucial. German companies must thoroughly review their business partners and transactions to ensure that there are no sanctions violations. This includes verifying the identity of partners, the correct allocation of goods, but also services to those not subject to the various sanctions.

The development and implementation of internal sanctions compliance policies is essential today. These guidelines should define clear procedures and responsibilities within the organisation. The development of methods for identifying and assessing sanctions risks is also essential. This includes analysing business relationships and the geographical location of business activities.

113 See Schwenger/Göcke, EuZW 2022, 499 (502)

114 Schwenger/Göcke, EuZW 2022, 499 (502)

115 Schulze/Gebert: The Russia-related M&A market comes to a standstill - Effects of EU sanctions on M&A deals, in: jurisPR-HaGesR 5/2022 note 1

116 Eggers/Pawel, in BB 2022, 1484 (1485)

RISK MANAGEMENT

In the area of risk management, companies should develop strategies that are both preventative and reactive. This includes the implementation of monitoring systems and control mechanisms. In addition, companies must continuously monitor and adapt their risk management strategies in order to be able to react to changes in the sanctions regulations. It is foreseeable that the EU will soon adopt a further package of sanctions against Russia.

IMPLEMENTATION OF COMPLIANCE PROGRAMMES

The implementation of compliance programmes is another important aspect. Important steps include defining a compliance strategy, allocating resources and setting up monitoring and reporting mechanisms not only in the export department of the parent company, but also in the Kazakh subsidiaries.

Employee training and awareness-raising is crucial to ensure a comprehensive understanding of sanctions risks (liability of German management) and the necessary compliance measures. Only by providing training and raising awareness companies can ensure that their local employees understand the importance of sanctions compliance and know how to act accordingly.

Sanctions compliance is a complex task that requires careful planning and execution. Organisations need to be proactive and ensure they have the necessary systems and processes in place to meet compliance requirements and implement effective risk management strategies. By adhering to these best practices, companies can minimise the risk of sanctions violations and ensure responsible business operations.



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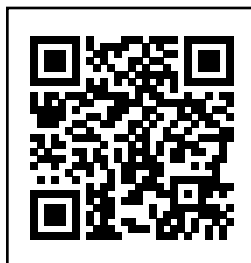
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About AHK Central Asia

Founded in 1994, the AHK Central Asia has been the partner and voice of German companies in Kazakhstan and the other Central Asian republics for 30 years. As a recognised official representative of the German economy, it maintains close cooperation with government agencies, associations and companies in the host countries and in Germany, represents the interests of German companies on site vis-à-vis these stakeholders and offers a platform for networking. The AHK Central Asia promotes the development of economic cooperation between Germany and Kazakhstan through a number of different formats at various levels and is committed to improving the investment and business climate in general as well as to specific projects and business partnerships. In addition, the AHK Central Asia provides operational support to German companies in market exploration and market entry through a wide range of corresponding services.



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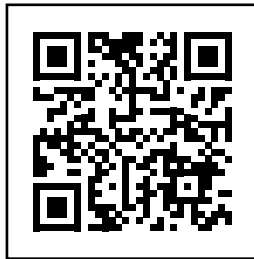
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Jan Triebel has been a business correspondent for Germany Trade & Invest and its predecessor organisation BfAI since 1993. After three years at the head office with changing country responsibilities, he spent several years in Moscow, Riga, Kyiv and Belgrade. Since 2018, he has been based in Almaty, where he is responsible for Kazakhstan, Kyrgyzstan and Mongolia.

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Germany Trade & Invest is the economic development agency of the Federal Republic of Germany. We help international companies identify suitable investment opportunities in Europe's strongest economy. Our global team of industry experts offers advisory and project support services at all stages of the investment process for smooth business start-up in Germany.



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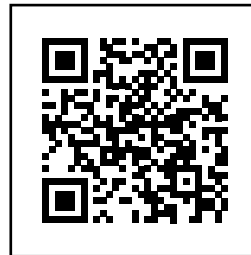
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About Rödl & Partner

Rödl & Partner advises you in Central Asia, in Kazakhstan with its office in Almaty and in Uzbekistan with its office in Tashkent. With a team of Kazakh, Uzbek and German lawyers, tax advisors and accountants, we have been supporting our clients in Central Asia since 2009 in all matters relating to market entry and investments in German, English, Russian, Kazakh and Uzbek.



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