

## MAIN LEGISLATION CHANGES 2020 - 2021

*In this publication, we would like to highlight the most significant changes and innovations in the legislation of the Republic of Kazakhstan in 2021.*

### 1. New calculation rates in 2021:<sup>1</sup>

- Monthly calculation index - 2,917 tenge
- Minimum salary – 42,500 tenge.
- Minimum basic pension – 18,524 tenge.
- Minimum subsistence amount – 34,302 tenge.

### 2. Changes in benefits associated with the COVID-19 pandemic<sup>2</sup>.

From January 1, 2021, the benefits for the evaluation factor '0' to the rates of individual income tax, social tax, mandatory pension contributions, mandatory professional pension contributions, social contributions, fees and contributions to mandatory social health insurance have ceased to operate.

### 3. How will the environmental legislation of Kazakhstan change?<sup>3</sup>

On July 21, 2021, the old Environmental Code of the Republic of Kazakhstan becomes null and void and a new one (hereinafter - the '**new Code**') comes into effect.

The new Code provides for the mandatory environmental impact assessment (hereinafter – the '**EIA**') among large enterprises of the 1st category, the list of which includes activities related to energy, oil industry, gas industry, subsoil use, production and processing of metals, chemical industry, etc.

The new Code also provides for public participation at all stages of the EIA, which includes 4 mandatory stages:

- Declaration of intent.
- Scope of the EIA.
- EIA report.
- Conclusion on the results of the EIA.

<sup>1</sup> Law of the Republic of Kazakhstan dated December 4, 2019 No. 276-VI "On the republican budget for 2020-2022".

<sup>2</sup> Resolution of the Government of the Republic of Kazakhstan dated April 20, 2020 No. 224 "On further measures to implement the Decree of the President of the Republic of Kazakhstan dated March 16, 2020 No. 287" "On further measures to stabilize the economy" on taxation issues".

<sup>3</sup> Code of the Republic of Kazakhstan dated January 9, 2007 No. 212-III "Environmental Code of the Republic of Kazakhstan".

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In turn, the facilities of the 2<sup>nd</sup> category will be evaluated on the need or absence to undergo the EIA, that is, through screening.

The facilities of the 3<sup>rd</sup> category will be regulated by local executive bodies, which shall accept declarations indicating the amount of emissions, discharges and volumes of accumulated and transferred waste.

In the old Code, there is no obligation to spend budget funds as per their intended purpose for environmental protection measures from the received payments for emissions. The new Code provides for the obligation to fully finance environmental activities from all incoming environmental payments.

The new Code also includes provisions on Renewable Energy. Now it states that waste disposal can mean the processing of waste energy resources to extract thermal or electrical energy. A licensing procedure will be envisaged for the implementation of activities for the processing, disposal and destruction of hazardous waste and a notification procedure will be introduced for the transportation of waste.

Reimbursement of costs for the construction and operation of new energy waste disposal facilities is carried out by the Settlement and Financial Center for the Support of Renewable Energy Sources (hereinafter – the ‘SFC’).

The SFC will buy energy produced by organizations using waste disposal, supplied by them to the unified power system at tender prices. Such prices are determined based on the results of the auction, subject to indexation, determined by the Government of the Republic of Kazakhstan.

Without limitation, after the adoption of the new Code, the corresponding changes will also affect the Commercial, Tax, Criminal, Administrative, Water, Land Codes, as well as the Law on Permits and Notifications.

The Commercial Code will provide for audits to immediately prevent actions threatening the life and health of the population without prior notice.

The Code on Taxes and Obligatory Payments to the Budget provides for exemption from emission charges for operators of new facilities that have received an integrated environmental permit through the implementation of the best available technologies.

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### 4. What changes will affect taxation<sup>4</sup>?

A number of innovations were adopted by the Law of the Republic of Kazakhstan dated December 10, 2020, No. 382-VI 'On Amendments and Additions to the Code of the Republic of Kazakhstan 'On Taxes and Other Obligatory Payments to the Budget'.

- 1) A special program of the Astana International Financial Center was adopted, according to which the individuals can apply for the status of an investment resident.  
Now, if an investment resident has indirect or direct ownership of a controlled foreign company, it is exempt from taxation.
- 2) Some changes were introduced to the specifics of the withdrawal of pension savings.  
In the case of a lump-sum pension payment, the individual income tax is calculated when transferred by a single accumulative pension fund to the recipient's bank account.

When an individual leaves for permanent residence outside the Republic of Kazakhstan or upon inheritance, the amount of individual income tax not withheld from the lump-sum pension payment is subject to withholding.

Voluntary pension contributions transferred to the unified accumulative pension fund, a voluntary accumulative pension fund in favor of the employee are not considered as income of an individual.

- 3) Now, the payers of a single aggregate payment do not submit a declaration for a single income tax.
- 4) Citizens of the Republic of Kazakhstan shall not declare money in bank accounts in foreign banks located outside the Republic of Kazakhstan, in the declaration on individual income tax unless this is required according to the procedure for universal declaration.
- 5) Insurance payments made by insurance organizations under endowment insurance contracts will also be excluded from the income of an individual subject to taxation.
- 6) Also, now individuals can use one-time passwords when signing tax reporting forms.

<sup>4</sup> Code of the Republic of Kazakhstan dated December 25, 2017 No. 120-VI "On taxes and other obligatory payments to the budget (Tax Code)".

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- 7) From January 1, 2022, the minimum threshold for compulsory registration for value-added tax will be reduced from 30,000 MCI to 20,000 MCI per year.

### 5. What will change in the legislation on renewable energy sources<sup>5</sup>?

To increase the attractiveness of the renewable energy market, in October 2020, again, it is planned to make changes and additions to some legislative acts of the Republic of Kazakhstan on the support of the use of renewable energy sources and the electric power industry.

- 1) The main ideas proposed by the Draft Law are the following:

- Exclusion of individual consumers and net consumers from the norms regulating the activities of 'energy-producing organizations';
  - Reduction of rates for electricity for consumers;
  - Introduction of the procedure for holding auctions for the construction of newly commissioned generating units with a flexible generation mode;
  - Extension of the electricity purchase agreement for 20 years.
- 2) Exclusion of individual consumers and net consumers from the rules governing the activities of 'energy-producing organizations'. This step will free individual consumers and net consumers from a significant amount of unusual obligations.
- 3) The authorized body will take into account the costs incurred when adjusting the cap rates. If the energy-producing organization incurred losses associated with a change in the price of coal, gas, sulfur-containing raw materials, petroleum products for the production of electricity, then such losses will be counted for a period not exceeding six months.
- 4) Providing the Settlement and Financial Center with financial support from the Government, in case of failure to fulfill its obligations on payments to RES projects.

*We would like to highlight the most significant changes and innovations in the legislation of the Republic of Kazakhstan in 2020.*

### 1. What you need to know about changes in the law on personal data<sup>6</sup>?

<sup>5</sup> Law of the Republic of Kazakhstan dated July 4, 2009 No. 165-IV "On Supporting the Use of Renewable Energy Sources"

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On October 21, 2020, the Rules for the collection and processing of personal data (hereinafter – the ‘**Rules**’) were introduced. Regulations provide methods of personal data collecting and processing, as well as describing each process by revealing the order of working with data.<sup>7</sup>

The main innovation of the Rules is the depersonalisation of court decisions in the course of statistical, sociological, scientific and marketing research.

Currently, in order to protect the secrecy protected by law when collecting and using court acts of the Supreme Court, local and other courts of the Republic of Kazakhstan by third parties, personal data must be impersonalised by the person who uses these court acts.

### 2. Important changes have affected labor legislation.

On 18 September 2020 the Order of the Minister of Labor and Social Protection of the Population of the Republic of Kazakhstan dated 3 September 2020 No. 353 “On Approval of the Rules for Submitting and Obtaining Information about an Employment Agreement in a Unified System for Recording Labor Agreements” (hereinafter – the ‘**Rules**’) came into force.

In accordance with the Rules, a Unified System for Recording Labor Agreements (hereinafter – the ‘**USRLA**’) is being introduced. Its main purpose is to automate the record of the employment contracts, labor activities and the number of employees. The USRLA reflects information on the conclusion, termination and amendments to employment contracts. The composition of the necessary data, which reflected in the system, has been determined.

### 3. Important changes in Healthcare in Kazakhstan<sup>8</sup>.

The new Healthcare Code in Kazakhstan effective from 19 July 2020 introduced valuable novelties in public healthcare regulation in Kazakhstan (hereinafter – the ‘**Healthcare Code**’). The Healthcare Code strengthened legal protection for medical workers, introduced a differentiated approach to medical errors, and redefined a citizen’s rights in vaccination matters.

Healthcare Code granted the right to Kazakh citizens to give informed consent or to refuse to receive the treatment and other medical interventions, including preventive vaccinations.

<sup>7</sup> Order of the Minister of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan dated 21 October 2020 No. 395/HK “On Approval of the Rules for Collection and Processing of Personal Data”.

<sup>8</sup> Code of the Republic of Kazakhstan dated July 7, 2020 No. 360-VI “On people’s health and the health care system”.

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The Healthcare Code divided the vaccination protocols into obligatory and voluntary, and the Government is responsible for approving the list of vaccines obligatory for Kazakhstan citizens living in the country.

The new Healthcare Code providing stronger legal protection for medical workers, who have not caused serious damage to the health of a patient. The term «medical error» has been replaced with the term «medical accident», which lead to easing the punishment for medical workers. Although, it will now be harder to initiate a criminal case for medical error, the Healthcare Code will still allow criminal prosecution in cases where medical errors that caused serious consequences to the health of a patient.<sup>3</sup> Other cases will be treated as an administrative offence.

One of the most important amendment related to the health of the public effects the restrictions on the consumption of e-cigarettes and the change of status of e-cigarettes to tobacco products. The Healthcare Code introduced a ban on the import, production and distribution of snus and other non-smoking tobacco products, as well as introduced administrative responsibility for the sale of tobacco products to persons under the age of 21 and application of all restrictive measures used for tobacco products.

The Healthcare Code introduces the provisions regulating medical check-ups of the Kazakhstan public. One of the important elements of these provisions becomes the application to the employers at large. Thus, in accordance with the new provisions of the Healthcare Code, the employers shall ensure and adjust the working conditions to allow the employee to undertake the medical check-up, including during the normal working hours.

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