Fulfillment of Tax Liability

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Abstract
The constitution of the Republic of Kazakhstan obliges every citizen to pay taxes. It means that sooner or later everyone comes up with the question of what tax liability is and how to fulfill this liability. However, in many occurrences this question remains unanswered by most tax payers, as the provisions of the relevant legislature often are not structured for a better understanding. Tax legislation in Kazakhstan in many cases lacks consistency, cancel each other out or have lots of complicated cross-references – all of this makes it more difficult for an average person to gain perspective and be at ease with the procedures that taxpayers are required to follow by law. Moreover, due to the fact that on the December 10th, 2008 a new Tax Code entered into force, the Kazakhstani tax payers are facing an absolutely new piece of legislation that leaves much to ponder.

The present paper attempts to provide a detailed analysis of the fulfillment of the tax liability process in Kazakhstan, using the provisions of the 2009 Tax code as a major guideline. The ultimate goal pursued – is building a complete framework for the fulfillment of tax liability. For this purpose legal provisions are summarized in diagrams and tables, contrasted with each other and critically examined from the perspective of both the tax payer and the tax authorities. By means of analytical procedures this paper reports on the ways of fulfilling the tax liability in the special case of a set trust management; contrasts the procedures at time of liquidating the activities of legal and natural persons. Paper then looks beyond the new tax code to special cases related to inheritance and forgiveness of the tax liability, as well as the alteration of timing for the fulfillment of the tax liability cycle. The study aims to create a full legal picture of the procedures and legislative norms related to the aforementioned procedures.

A detailed comparison of the Tax Liability section of the New and the Old Tax codes is also presented. This is done to give the reader an opportunity to witness the progress made by the New Tax code in the area of alleviating the process of fulfilling tax liabilities and making Kazakhstani tax law more principle based, rather than rule-based. Despite these improvements, the paper concludes that the New Tax Code still has room for development on the way to becoming an effective tool in managing the economy of Kazakhstan.

Keywords: Tax Liability, Kazakhstani Tax Law, Fulfillment of the Tax Liability

1. Introduction
This work is an analysis of procedures for fulfilment of tax liability in the New Tax Code of the Republic of Kazakhstan. The main objective of the paper is to provide reader with the description of procedures for fulfillment of tax liability summarized from the different articles of the Tax Code. There are lots of peculiarities for different cases like liquidation of natural and legal persons; persons recognized as missing; trust management agreements; alteration of timing etc. Using analysis of procedures new ideas of tax planning are described in this work. In particular, it describes how the trust management agreement could be used by natural and physical persons to avoid CFC rule, which is in the Article 224 of the Tax Code. The last part of the paper is devoted to the comparison of New and Old Tax Codes. Analysis of innovations in the Tax Code shows their implications on the economical and social situation in the country.

2. General procedure for fulfillment of tax liability
There were many changes in the new Tax Code of the Republic of Kazakhstan. However, general procedure to fulfill the tax liability was not changed and consists of five steps, which are logical and straightforward and arise from the definition of the tax liability. They are prescribed in the article 31:

1. to be registered with the tax authorities;
2. to keep records of taxable items and (or) items related to taxation;
3. to calculate amounts of taxes and other obligatory payments;
4. to make and present, except for tax registers, tax forms to the tax service authorities;
5. to pay taxes and other obligatory payments to the budget.

The payments have to be made in national currency (tenge) except in the cases where the taxpayer is the joint-stock company or subsurface user who works in Kazakhstan under the contract. For such cases there are special legislative acts and separate Section 11 of the Tax Code.

There are two ways how the liability can be fulfilled: through the tax agent or directly without tax agent. If there is tax agent, then the liability is considered to be fulfilled from the day of withholding of the tax. Taxpayer is still obliged to follow all the steps in the procedure of fulfillment (register with the tax authorities, keep records of taxable items) except the assessment of the amount of taxes, which is obligation of the tax agent (Article 12 and Article 32). However, assessment of the amounts can be entrusted to the tax authorities and authorized state bodies (Article 32). An example of the tax agent could be legal person, which pays the Individual Income Taxes of its employees. The company keeps records about the income of the employees, assesses the amounts of income taxes, and withholds amount of taxes from the salaries of employees. If there is no tax agent then the taxpayer can fulfill its liability in cash or cashless form. When the payment is maid in cashless form, the liability is considered to be fulfilled from the day a person either receives the acceptance of the payment order from the bank or a person makes payment through via automated teller machines and other electronic devices. In the case of cash payment the liability is fulfilled from the day a person places the money into the bank, other organization, which carries out certain types of banking transactions, authorized state body, or local executive body.

3. Trust management and tax planning

New Tax Code introduced new articles 35 and 36 where trust management agreement was described. It does not give straight definition of trust management, but it answers such questions like who is the taxpayer and whether transfer of property is a sale.

Firstly, what is the trust management? It is an agreement that allows the trustee to administer the entrusted property according to his or her own judgment. The question arises who is the owner of the entrusted property. To answer this question the distinction between legal and economic ownership is important. A trustee takes legal title to the entrusted property, which means that the trustee's interest in the property appears to be one of complete ownership and possession, but the trustee does not have the right to receive any benefits from the property. The right to benefit from the property belongs to the beneficiary.¹ That is economic ownership belongs to the founder of the agreement.

According to the civil code the legal ownership is transferred to the trust manager:

¹ http://legal-dictionary.thefreedictionary.com/Trust
“In case trust management of property is established, a trustee shall be obliged to carry out, on his behalf, the management of property transferred to his ownership, use, and disposal in the interests of a given beneficiary, unless it is otherwise stipulated by the contract or legislative acts.”

Tax code says that the economic ownership remains with the founder of the agreement:

“Income receivable (received), expenses payable (incurred) and property, which was purchased and (or) received by the trust manager in the process of performance of duties entrusted to such person, shall be recognized as income, expenses and property of the founder of trust management under a property trust management agreement, or of a beneficiary in other cases of arising of trust management.”

Which definition should be used for the purpose of taxation? Tax Code answers this question in Article 2:

“Where a contradiction exists between this Code and other legislative acts of the Republic of Kazakhstan, for taxation purposes the provisions of this Code shall apply.”

It means that the owner of the entrusted property is founder of the trust management agreement. As owner it is his obligation to fulfill tax liability. However, Tax Code allows entrusting fulfillment of tax liability to trust manager. There are several cases described. The trust manager could be resident or non-resident. Let’s first consider the case when the trust manager is resident. The fulfillment of the Value Added Tax shall be entrusted only to the trust manager (the owner cannot assess and pay VAT). For the other taxes and obligatory payments to the budget there are two possibilities depending on agreement: the owner can either entrust the fulfillment to the manager, or do it on his or her own. If agreement specifies that trust manager has to fulfill the tax liability, then he or she has to be registered with the tax authorities. However, the owner does not have any choice if the trust manager is non-profit organization, organization, carrying out operations in social sphere, private notary and advocate, or legal persons who are producers of agricultural produce and rural consumer cooperatives (Article 35, 134,135,181,182). In these cases the fulfillment of the liability cannot be entrusted to the trust manager. The second case is when the trust manager is non-resident. The owner cannot entrust the fulfillment of the liability to non-resident trust manager according to the article 36.
How the trust management agreement can be used for tax planning? To be more precise, how it can be used to avoid CFC rule in Kazakhstan legislation?

Article 224 of the Tax Code prescribes residents of the Republic of Kazakhstan who hold more than 10% of non-resident legal person located in the country with privileged taxes to fulfill tax liability in Kazakhstan. It does not matter whether the resident receives money from the entity (in forms of dividends). He or she is obliged to pay taxes on the part of the profit attributable to him or her. Is it possible to avoid double taxation using trust management? Let’s consider two cases: trust manager is a non-resident and a resident of Kazakhstan.

If the trust manager is non-resident, then provisions of Article 224 definitely are not applicable him. He would pay taxes in the country of his location with the lower tax rate on the earnings of the entity and would not have to fulfill tax liability in Kazakhstan. But the main point is that the resident cannot entrust fulfillment of tax liability to non-resident trust manager. Any taxes arisen from profit earned by entity shall be paid by the resident independently. He will pay taxes in both countries in accordance with Article 224.

Another case is when the trust manager is resident. Founder can entrust fulfillment of tax liability to the trust manager. In this case, trust manager will assess the amount of tax using the rate applicable to him or her:

“Where the trust manager is entrusted to fulfill the tax liability of the assessment, payment or withholding of amounts of taxes and other obligatory payments to the budget and also to make and to submit tax for the founder of trust management under the property trust management agreement or by the beneficiary in other cases of arising of trust management, the fulfillment of such tax liability shall be
carried out on behalf of the person who is the trust manager at the rates and in accordance with the procedure, which are established by the special part of this Code for the persons to which the trust manager is referred."

If the founder is a legal person then it can use trust manager to save taxes. Without trust manager this legal person would pay 20% taxes in Kazakhstan. But if the trust manager is natural person, the rate would be only 10%. It means that the company can save 10% of taxes. However, founder should take in consideration the costs of trust management. If they exceed saving from taxes, then there is no need to use this scheme and it is easier to pay 20% tax.

Legal person can attain 10% saving from the trust management agreement. But is it possible for legal and natural persons to avoid completely Article 224? If fulfillment of tax liability is entrusted to the trust manager is he liable to pay taxes in Kazakhstan? Legally he is the owner of property and, thus, of earning of the entity. However, as it was mentioned above for the purposes of taxation the trust manager is not an economic owner of the property entrusted. It means that he does not hold those 10% of legal entity. Thus, Article 224 cannot be applied to him. Trust manager will fulfill tax liability which arose from the activities of the legal entity in place of its location (country with privileged tax system). Income from trust management agreement net of taxes will belong to the founder and will be calculated as follows in accordance with the Article 35.1:

Income to be received from the trust management agreement  
\[xxx\]

Less: Loss Carry forward  
\[xxx\]

Less: Amount of tax liability entrusted  
\[xxx\]

Income of the founder or beneficiary  
\[xxx\]

Is the income from trust management agreement taxable? If the founder is a legal person then this income is included in the aggregate annual income in accordance with the articles 85.23 and then excluded from the aggregate annual income in accordance with 99.9. For natural person it is possible to avoid taxes if the trust manager is a natural person. In accordance with article 156.36 net income from trust management agreement is exempted. But if the trust manager is a legal person, then net income is considered as dividends (Article 172.1). It means that net income will be taxable at the source of payment at the rate 5% (article 159).

The scheme described above can help to avoid taxes in Kazakhstan. But the main problem is that it is based on the wording of the tax code. According to substance over form principle founder will transfer the property and the liability to pay taxes in Kazakhstan to the trust manager. However, the point is that in Kazakhstan this principle does not work and the scheme could be applied for tax planning.

4. Liquidation of activities of legal person and natural person: A Comparison of Articles 37 and 41

According to the words of Yergozhin (chairman of Tax Committee of Ministry of Finance of the Republic of Kazakhstan) old tax code did not legibly define the procedure for fulfillment of tax liability in cases for reorganization and liquidation of legal persons, their structural units, termination of activities of individual persons, permanent establishment of non-resident legal person. The new law established the procedures and requirements for those cases. New procedures of fulfillment of tax liability in cases of liquidation of activities of the legal person and individual person are different, but there are some similarities.
In general for both types of business the procedure would consist of the following steps:
1. To prepare and submit specific documents (like application to conduct documentary audit and liquidation tax reports) to inform the tax authorities;
2. To pay all the taxes and other obligatory payments to the budget, and transfer obligatory pension payments not later than in 10 days after submission of liquidation tax reports;
3. To submit specified documents to the tax authorities in the place of location after completion of audit. Tax authorities will begin the audit in 20 days after submission of application.

Articles 37 and 41 also describe details for fulfillment of tax liability for legal and individual persons. The similarities are as follows:
1. Liquidation tax reports have to be prepared for the time from the beginning of the tax period, in which the tax application for conducting of documentary audit is presented, to the date of presentation of such an application

![Figure 2. Period for liquidation tax reports](image)

2. The amount of taxes and other obligatory payments erroneously paid or paid in excess are either offset towards payment of tax arrears or refunded if there are no tax arrears in accordance with the Tax Code.
3. In case of liquidation of Legal Person there are some additional requirements for procedure of fulfillment of tax liability. The liability will also include amounts of taxes that arose between the day of submission of tax liquidation reports and the day of completion of documentary audit. Legal person pays taxes from its money, including those received from sales of its assets, in accordance with priority established by the legislative acts of the Republic of Kazakhstan. If there are not enough assets to cover obligations of the company, then the remaining amount is paid from the sources of founders of the liquidated company. After the completion of procedure of fulfillment of tax liability, tax authority is “obliged to give to the taxpayer a certificate of absence of tax arrears, arrears of obligatory pension contributions and social assessments in accordance with the procedure and within the time, which are established by this Code”. Procedures in case of termination of activities described in Article 37 for the legal person resident of the Republic of Kazakhstan can be applied to structural unit of a non-resident legal person, and also of a permanent establishment of a non-resident legal person.

For the natural person the procedure has other peculiarities. The peculiarity is that tax arrears are paid at the expense of individual entrepreneur’s funds, including those received from selling of individual entrepreneur’s assets, in accordance with the
priority sequence established by the legislative acts of the Republic of Kazakhstan. The liability is considered to be fulfilled after the completion of the documentary audit and payment of tax arrears, arrears of obligatory pension contributions and social assessments. From this date individual entrepreneur is stroked off the registration.

Short summary of similarities and differences for natural and legal persons are represented in the Table 1 below:

<table>
<thead>
<tr>
<th>Legal person</th>
<th>Natural person</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Timing</strong></td>
<td></td>
</tr>
<tr>
<td>Legal person shall inform tax authority within three working days about the cessation and then within three days after approval submit documents;</td>
<td>Individual Entrepreneur shall submit to the tax authority documents within a month;</td>
</tr>
<tr>
<td><strong>Documents in the beginning of the procedure of liquidation</strong></td>
<td></td>
</tr>
<tr>
<td>- Tax application to conduct documentary audit</td>
<td>- a certificate on registration as an individual entrepreneur or an explanation on paper in case of its loss or damage;</td>
</tr>
<tr>
<td>- Liquidation tax reports</td>
<td>- a certificate on registration for value-added tax or an explanation on paper in case of its loss or damage (in the event that such person is a value-added tax payer);</td>
</tr>
<tr>
<td>- a certificate of registration in respect of the value-added tax or an explanation on paper in its loss or damage (if it is a value-added tax payer)</td>
<td>- a document confirming the publication of information in a periodic printed matter on the cessation of activity of the individual entrepreneur.</td>
</tr>
<tr>
<td><strong>Payment of other liabilities</strong></td>
<td></td>
</tr>
<tr>
<td>Founders shall pay the taxes if there are not enough assets;</td>
<td>Entrepreneur pays all the taxes from his or her funds;</td>
</tr>
<tr>
<td>Legal person is obliged to fulfill a tax liability arose after submission of liquidation tax reports and completion of tax audit</td>
<td>The tax liability is considered to be fulfilled after the completion of the documentary audit, provided that tax arrears, arrears of obligatory pension contributions, and social assessments are paid in full.</td>
</tr>
<tr>
<td>a statement of the bank and (or) organization, which carries out certain types of banking transaction, concerning the closure of existing banks accounts;</td>
<td>a document from the body of internal affairs concerning the destruction of the seal of the individual entrepreneur (where available).</td>
</tr>
<tr>
<td>a liquidation balance-sheet;</td>
<td></td>
</tr>
</tbody>
</table>
Get a certificate of absence of tax arrears, arrears of obligatory pension contributions and social assessments in accordance with the procedure and within the time, which are established by this Code

<table>
<thead>
<tr>
<th>Documents in the end of the process of liquidation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Get a certificate of absence of tax arrears, arrears of obligatory pension contributions and social assessments in accordance with the procedure and within the time, which are established by this Code</td>
</tr>
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Table 1. Comparison of requirements for fulfillment of tax liability for legal and natural persons.

New article in the tax code put in order the process of liquidation for the company and individuals. This new change is another step towards developed and properly structured tax system in Kazakhstan.

5. Special cases for legal person: liquidation of structural unit and reorganization

5.1 Structural unit

When a legal person makes a decision to terminate its structural unit, it has to consider whether this unit is an independent taxpayer. However, in any case this legal person has to present the following two documents:

1. a tax application concerning the cessation of business;
2. a copy decision of the resident legal person concerning the cessation of business of the structural unit;

Presentation of the tax liquidation reports depends on whether the structural unit is independent taxpayer. If it is so, then the legal person has to simultaneously submit tax liquidation reports in addition to the documents listed above and has to pay taxes, charges, and social assessments, and transfer obligatory pension contributions no later than in 10 days after submission of document to the tax authorities. If the unit is not an independent taxpayer, then there is no need in preparation of tax liquidation reports. The legal person, which formed this unit, has to pay tax arrears and other obligatory payments.

After tax liability is fulfilled legal person has to present to the tax authorities a statement concerning the closure of its existing bank accounts from the bank and (or) organization, which carries out certain types of banking transactions. In turn, tax authorities are obliged to give a certificate of absence of tax arrears, arrears of obligatory pension contributions and social assessments in accordance with the procedure and within the time, which are established by the Code.

5.2 Reorganization

Another case for the legal person is reorganization. Articles 39 and 40 describe the procedures for fulfillment of liability in the case of reorganization. Like for legal person in case of liquidation of its activities if there are any amounts of taxes which
were erroneously paid or paid in excess, the legal person can offset those amounts towards the tax arrears. If there are no tax arrears, the amounts can be refunded by its successor. There are four ways of reorganization: merger, accession, division, and separation. Regardless the way, the legal person has to inform tax authorities during the next three days after passing of decision. After this, authorized state body excludes this legal person from the State Register of Legal Persons.

For Legal person (except for those which reorganize by way of division or transformation) the last step is to present to the tax authorities the following document within three days after exclusion from the State Register:

1. copy order of the authorized state body concerning the reorganization of the legal person;
2. certificate on registration in respect of the value-added tax or an explanation on paper in case of its loss or damage (if it is a payer of the value-added tax).

After submission of documents tax authorities have three days to transfer the balance of official accounts. It depends on the way of reorganization to which tax authorities the balance would be transferred.

For legal person who chose to reorganize by way of division or transformation the nest step (after notification of tax authorities) is to prepare division balance sheet. After its approval legal person has three days to submit following documents:

1. a tax application for conducting of documentary audit;
2. liquidation tax reports.

After this the same rules as in case of liquidation of legal person can be applied for the legal person. It has no more than ten days after submission of tax reports to pay tax arrears and other obligatory payment to the budget. No more than in 20 days after submission of tax application tax authorities shall conduct the documentary audit. After completion of audit legal person has to submit:

1. A certificate on value-added tax registration or an explanation on paper in case of its loss or damage (in the event that it is a value-added tax payer);
2. A statement from the bank and (or) organization, which carries out certain types of banking transactions, concerning the closure of bank accounts it had.

If there are no tax arrears and arrears of obligatory pension contributions, the documents listed above have to be submitted no more than in three days after the completion of documentary audit.

Two cases for a legal person (termination of structural unit and reorganization) have different procedures for fulfillment of tax liability. Each of them has its own peculiarities. However, most of the requirements are based on the procedure in case of liquidation of legal person.

6. Cases for Person Recognized as Missing and for Person Deceased (recognized as deceased)

6.1 Main principles and procedures

The mechanism of fulfillment of the tax liability in cases of a person recognized as missing or deceased is largely similar. In both cases any taxes in arrears are paid out using the property available for satisfaction of claims. The cut off date, i.e. the date as of which no additional taxes or fines are accrued, is determined slightly differently. In the case of a person recognized as missing, a court decision serves as a basis for suspension – basically from the day a person is recognized as missing or dead the tax liability of such person is suspended.

The question that now arises relates to the date of the court decision and generally to the procedure of recognizing a person as missing or deceased. This date is
important because even in the absence of the tax payer the tax liability continues to exist, prompting fines and penalties for untimely submission of tax reports and etc. Naturally the procedure of recognizing a person as missing or deceased is regulated by the Civil Code of the Republic of Kazakhstan. The said code specifies that an application for this case is accepted “from any interested party”, so theoretically tax authorities can serve as the initiator of such an application. And then as it follows from article 28 of the General part of the Civil Code, a citizen can be recognized as missing if there is no data about his or her whereabouts at the place of residence for the period of 1 year and a citizen can be recognized as missing if there is no data in the place of residence for the period of 3 years. The starting date, unless it can be determined with certainty, is usually the first of the month which follows the date of the last received data about the person or if there is no such data - the 1st of January of the consecutive year. This date proclaimed by court becomes the cut-off date, starting from which the tax liability is suspended. The principle of “suspension” means that there will be no additional taxes accrued or fines and penalties allocated - it follows from article 610 point 9. If there are any taxes or fines and penalties awarded unknowingly by the tax authorities beyond this cut-off date – then they must be written off as unlawful. It is important to note as well that the liability of a person recognized as missing or deceased is not subject to the statute of limitations and can be altered with the advance of the new circumstances such as, for example, revealing the whereabouts. Now then that there is a court decision any tax arrears prior to the cut-off date will be paid either by the person appointed as a guardian for the property or by the heirs within the cost of inherited property. In both cases if the existing property will be insufficient for covering of the tax liability, any unpaid balances will be written off on the basis of a special court resolution regarding the insufficiency of property. However, there are several limitations. Firstly, if the heirs of the property are minors, then another court decision is necessary in order for the tax authorities to claim the tax liabilities. And secondly, if there are some sustenance payments to be paid to certain parties related to the person recognized as deceased or missing, e.g. alimonies, then these payments must be provided for before any other payments are made. (Article 29 of the Civil Code)

Generally, we see that the regulation of the relations between the tax payer and the tax authorities in cases when a tax payer is recognized as missing or deceased is in many ways dependent on the Civil Code provisions as well as the resolutions of the court. A conflict may arise as a result of miscommunication/slow communication between these institutions as it was seen in the past and generally the lack of consistency between these two pieces of legislature. For example, in case of property distribution for the satisfaction of the liabilities of a person recognized as missing or deceased there is no clear gradation or order in which the liabilities must be satisfied, as it is done in case of recognizing the bankruptcy of a natural person (individual entrepreneur).

6.2 Forgiveness of taxes in arrears

The curious concept of forgiveness in taxation must be dealt without undue carelessness. On one hand we see that Article 20 of the new Tax Code obligates the tax authorities to act in the best interests of state, which appears to be the maximization of the taxes collected with least possible losses – which is the direct interpretation of the goals of the tax authorities service specified in Article 18. Basing strictly on these goals and obligations – writing off (forgiving) the taxes in arrears doesn’t fit in so well into the general framework. On the other hand, however, these
kind of provisions do exist in the new Tax Code even to a greater extent that they did in the old one. The reasoning is not only based on the accounting necessity to write-off the uncollectible debts. It appears that the new Tax code made a step closer to being more cost-efficient and effective. The fulfillment of the tax liability by the tax payers and agents should not only be secured in the dimension of “the more the better”, but rather on the principle of convenience and prudence. For example, there is now a limit on the taxes in arrears, freed by the tax authorities from imposing the methods of compulsory retrieval (with exception of accrued fines) and other measures for securing the fulfillment of the tax liability. Now compulsory measures are taken in regards of the taxes in arrears exceeding MCI by 3 times. As of 2009 this amount equals to 3819 tenge. This makes sense, because previously tax authorities had to retrieve taxes with the debt of even 1 or 2 tenge. And in order to do that the authorities would send 2 notices to the enterprise to accrue additional taxes, now there is only one notice sent. Finally, the realization of the fact that the total monetary, labor and management efforts by far exceed the amount of money retrieved applying it. In a way these measures set the lower “tax forgiveness” threshold and allow the tax authorities to concentrate on the tax collections of larger debts. Besides, this doesn’t free the taxpayers from the obligation to pay out the taxes in arrears up to this limit.

The process of compulsory tax retrieval has also been altered. For example, the norm for withdrawal of cash from the tax payer’s bank account has been abolished; the current practice is to suspend cash transactions only. This measure by far appears to be more liberal and appeals to the discipline and consciousness of the tax payer to make the right move himself, rather than forcing it out of him. Some other new measures include, for example, banning the banks from opening new bank accounts for those tax payers, whose transaction operations have been suspended and another one is yearly publications in mass media about the most prominent debtors, who ignore their tax liability fulfillment obligations. The latter practice is a successful finding of the USA and European countries. It also appeals to the moral values of the tax payers.

6.3 Statute of limitations

The statute of limitations is a provision that basically sets the term, during which both the tax authorities and the tax payer can introduce any changes to the taxes paid and collected. For example, the tax payer can submit additional reports, revoke the previously submitted ones, and claim refunds, while the tax authorities have the right to reassess the collected amount of taxes. The general term of the statute of limitations is set at 5 years in the article number Article 46. This article also discusses special case of the subsurface users, whose statute of limitations can exceed the period of 5 years, because for them this period lasts for the effective term of the contract and then five more years. This provision takes into account the fact that many of the subsurface contracts are signed for periods of 10 years and more and due to the specifics of the industry where the profit realization is often an uneven and lengthy process. Another case is when a tax payer wishes to receive refund on paid state duties; in this case an application should be submitted within a 3-year term.

Another important moment concerned with the statute of limitations is that even when the term set in present code expires, nonetheless a tax payer can argue the case. Protecting the rights of the tax payers is firstly done by means of administrative procedures. The main sources for the rights protection base are: the constitution of the Republic of Kazakhstan, the code of the Republic of Kazakhstan “On administrative offences”, the law “On taxes and other obligatory payments to the budget”, the Tax
Code of the Republic of Kazakhstan – this legislature stipulates the order and terms for filing lawsuits against the tax authorities service and the actions of the government officials. The present tax law provides for two stages of appeal the unlawful resolutions of the tax authorities’ services:
1. Higher-level tax authorities service;
2. Court

According to the set order, for example, appealing the results of the tax inspection is to be done at the Tax committee under the Ministry of Finance. Statute of Limitation for the Tax Liability and Claim

7. Alteration of Timing

7.1 Principles and procedures

Alteration of timing is granting the permission for payment of taxes at a later time. The granting of the alteration of timing can be of two types, depending on the term of it: for the term of 3 months and for the term of 12 months (general). This right doesn’t exempt the tax payer from any fines and penalties related to the late payment of taxes.

Not all of the taxes can be paid at a later time – taxes withheld at source of payment, excise taxes and VAT on imported goods. These taxes are subject to be paid at the time of their origination.

The time can be altered based on a pledge of property and (or) bank guarantee. The decision regarding this postponement is taken by the appropriate authorities, depending to what kind of budget the payment will go. In case if this is the republican budget – then the decision to accept or reject resides with the high-end tax authorities or the “authorized body” as named in the tax code itself. For the proceeds into the local budget the decision is taken by the local tax authorities’ service, depending on the registration of the tax payer.

7.2 The procedure for alteration of timing for fulfillment of the tax liability

Alteration of timing is a basically a standard service provided by the tax authorities, which constitutes the postponement of the term for payment of taxes set by the tax code and VAT on import.

The resulting output of this service is the approval or rejection of the application for the alteration of timing for payment of taxes. In both cases a taxpayer must submit several documents for the process of consideration to start, these include:
1. A justified application that states the reasoning for granting an alteration of timing;
2. An excerpt from the taxpayer’s account for settlements with the budget that supports the presence of taxes in arrears;
3. A pledge agreement concluded between the taxpayer and the appropriate tax authorities or a bank guarantee;
4. A schedule for settling the taxes in arrears that sets the terms for paying out the taxes and is an integrate part of the pledge guarantee or bank agreement;
5. Appraisal report that estimates the value of pledged property at the moment of applying for the alteration of timing for fulfillment of tax liability (in case if a tax payer concluded a pledge agreement).

After the documents are submitted, they pass through a series of reviews for qualification. The basic requirement is the availability of the full package of documents and then there are several requirements for the pledge agreement and the bank guarantee. In both cases the procedure for the alteration of timing for fulfillment
of the tax liability in respect of payment of taxes against a bank guarantee and against a property pledge is to be concluded within the period of 15 days.

7.3 Property pledge and bank guarantee – comparison and requirements

In order for property pledge and bank guarantee to be secure they must qualify based on some specific criteria. The bank guarantee must be provided not later than tend days from the day of concluding the guarantee with a bank – this measure ensures that the guarantee is not out dated. Moreover, the bank guarantee must be irrevocable, meaning the bank cannot back out of the guarantee agreement.

Property Pledge Agreement is to be concluded within 15 calendar days since application, also it should contain an appraiser’s report on the market price of property. Appraiser’s report should be up to date – no later than 15 calendar days before application.

Property pledge should qualify under the standards regarding its content and composition. The following conditions must be fulfilled for the pledge to be valid:

1. Contents of pledge agreement must be in accordance with RK Law
2. Property must be realizable, insured against loss or damage, and its market price must be not less than the amount of taxes owed to the budget
3. In some cases must be registered with appropriate registration bodies

The following may not be pledge items:

- life support items;
- electric, thermal and other types of energy;
- arrested property;
- property, in respect of which there are restrictions imposed by the state bodies;
- property, which is charged with rights of third persons;
- perishable raw materials, foodstuffs;
- property rights;

The nature of these restrictions is self-explanatory – the pledged items must survive long enough, and be free for realization in case of the default on the alteration of timing contract. Also in some cases the pledge contract must be registered with the appropriate authorities – if the pledged item represents property of certain categories. Below there is presented a diagram summarizing the alteration of timing procedure, contrasting the bank guarantee and property pledge cases.

<table>
<thead>
<tr>
<th>Bank Guarantee</th>
<th>Property Pledge</th>
</tr>
</thead>
<tbody>
<tr>
<td>An application for alteration of the timing with a bank guarantee agreement and/or pledge of property of the taxpayer and (or) third person</td>
<td>Property pledge must have an attached appraiser’s report</td>
</tr>
<tr>
<td>The bank guarantee must be irrevocable and consistent with laws of RK</td>
<td>Property pledge must have an attached appraiser’s report</td>
</tr>
<tr>
<td>Not later than in fifteen calendar days from the day of the taxpayer's application the tax service authority must make the decision.</td>
<td></td>
</tr>
<tr>
<td>Decision must contain:</td>
<td></td>
</tr>
<tr>
<td>- type and amount of tax</td>
<td></td>
</tr>
<tr>
<td>- Name of the natural person or business name of the taxpayer</td>
<td></td>
</tr>
<tr>
<td>- Identification number</td>
<td></td>
</tr>
<tr>
<td>- Term of validity of the decision.</td>
<td></td>
</tr>
</tbody>
</table>
Table 2. Alteration of timing

Below is a diagram that portrays the scheme for termination of the alteration of timing contract. In the event of nonfulfillment the tax authorities are obliged to retrieve the property and to realize in a compulsory non-judicial procedure in accordance with the civil legislation of the Republic of Kazakhstan – basically auction it.

![Diagram of alteration of timing](image)

**Contract terminates**

- When the term specified elapses
- Ahead of time if taxpayer pays out all taxes

**In case of nonfulfillment**

- Tax authorities must retrieve collateral and/or the bank guarantee

7.4 Cessation of Tax Liability

Cessation of the tax liability happens under the certain circumstances and removes the obligation for the fulfillment of tax liability from the tax payer (tax agent). Below there is presented a summary table that shows the cases in which the liability of natural and legal persons is ceased:

<table>
<thead>
<tr>
<th>Natural Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Death of the tax agent or</td>
</tr>
<tr>
<td>2. Announcement of tax agent as deceased by court</td>
</tr>
<tr>
<td>3. After entrepreneurial activity is ceased</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Legal Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Liquidation of the legal person</td>
</tr>
<tr>
<td>2. Reorganization by accession (in relation to the acceded legal person), merger and division.</td>
</tr>
</tbody>
</table>

Table 3. Ceased liability for natural and legal persons


The number of changes that were introduced into the new tax code and specifically into the section include is rather significant. One of the major changes is the inclusion of bank guarantee as a way of securing the alteration of timing agreement. This was done to reflect the modern pledge market – where banks play an important role. Moreover the pledging of the third parties’ property is now possible under the provisions of the new code. This increases the opportunities for the legal and natural persons to get an alteration of timing. The period of alteration of timing for the fulfillment of the tax liability itself has been increased from 10 to 12 months, a term which coincides with the operating cycle of the majority of Kazakhstani companies and therefore is easier to keep up with. Another novelty of the 2009 tax
code is also concerned with the alteration of timing procedure: local authorities are no longer included into the decision making process for granting the postponement. This is supposed to reduce the bureaucracy load and remove the unnecessary paperwork from the process. Another seemingly small change – in the old tax code the obligation to retrieve the pledged property was termed as “a right of the tax authorities”- which in the sense left the choice at the discretion of the tax officials, in the new code, however, this is no longer a right, but an obligation of the authorities. This is a curious incidence of how a small change in phrasing can mean a lot for the interests of the state. And lastly the section contains several new articles that deal with such things as requirements for a property pledge agreement and bank guarantee, and the procedure associated with concluding a property pledge agreement.

The subjective understanding of the changes in the new tax code that was gained from the investigation of its part dealing with the fulfillment of the tax liability allows for drawing of several conclusions as to the criteria that were attempted in its implementation.

Firstly, this apparently is the reduction of the administrative barriers and simplification of the bureaucratic procedures for the fulfillment of the tax liability. Indeed, as reported by the spokesman for the Tax authorities service, in his interview to the newspaper “Panorama”, the “paper load” has been reduced at least twice, which affects there efficiency and throughput not only of the tax authorities, but also of all the tied participants in the cycle of paying the taxes. Tax administration is a complex process, but when it is effective and more principle based rather than rule based, can really make a difference in the present day economy, which is reliving its next major crisis. Decreasing the bureaucratic load will also help in the never-ending struggle with corruption, because in the present version there are less touch points with the authorities that have the decision making power vested upon them. Another major accomplishment of the Tax code is its becoming more up-to-date with the modern economic and business environment. It is natural that the technology development offers many business opportunities, the omission of which in the legislature used to be apparent. It is always important to keep the legislature updated for the new developments in economy, so the tax code is supposed to remain in line with the business, not behind the lines.

Apparently the present version of the tax code went to great lengths to alleviate the procedures associated with the fulfillment of the tax liability, and by doing so it is supposed to stimulate the economic activity. And even though in its present shape it still has room for improvement, the new 2009 tax code had made a considerable stride towards becoming a principle-based piece of legislature that intends to become an effective tool for managing the economy of Kazakhstan.

References

2. Civil Procedural Code: Special Part as of March 2, 2007

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