

Rödl & Partner

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SEIZING OPPORTUNITIES

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Latest news on law, tax and business in
Kazakhstan and Uzbekistan

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To new shores in Central Asia

Dear Reader,

Since the beginning of 2019 Rödl & Partner has been operating in the two largest countries of Central Asia – Kazakhstan and Uzbekistan. The stable political and economic situation as well as the favorable investment climate of the two leading economies in the region offer promising opportunities for international companies.



Uzbekistan and Kazakhstan are closely connected not only with the common history as part of the USSR, but also with their cultural interdependence and common religious and linguistic roots and economic interests.

In our new newsletter Central Asia, we will deal with questions in the areas of law, accounting and auditing in Kazakhstan and Uzbekistan. There are currently numerous legislative changes, especially in Uzbekistan, which legal and tax specificities we will review.

Enjoy your reading!

Best regards

Michael Quiring

Attorney of law

Partner

Local branch manager in Kazakhstan and Uzbekistan

→ Kazakhstan



Legal Aspects of the Possibility for Implementation of Emission Limits under Development of “Green Economy”

Kairat Yermakhanbet,
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Nowadays, we are observing the trends development of the sustainable utilization of environmental resources. Governments of many countries and private multinational companies increasingly realize that matters of the economic development and environmental concerns must not be separated; environmental deterioration can impair the economical growth of the country which consequently affects the activities of individual companies.

In recent years, the international community started to raise the issues of the environmental preserving by introducing the “green economy”. In Kazakhstan, this has already led to the implementation of numerous measures.

“Green economy” means the economy aimed at preserving the society’s well-being through efficient use of the natural resources, it also ensures a return of end-use products to the production cycle. First of all, the Green Economy is aimed at the economical consumption of resources.

In order to improve the life quality of the Kazakhstani population by reducing environmental impact, the First President of the Republic of Kazakhstan, Nursultan Nazarbayev, approved the Concept dated May 30, 2013 on transition to the “green economy” which creates a foundation for profound systemic changes¹.

In addition, according to many experts, development of “green economy” will allow our country to avoid an environmental crisis which extents have already affected many post-industrial countries.

As a part of the Green Economy development program, Kazakhstan is planning to invest in ten key economic sectors:

- Agricultural industry;
- Housing and public services;
- Power industry;

- Fishery;
- Forestry;
- Industry;
- Tourism;
- Transport;
- Waste disposal and recycling;
- Water resources control.



According to statistics, “green economy” covers 40 per cent of the global innovations, and 50 per cent of these innovations are dedicated to the energy conservation and energy efficiency which are the key factors for “green” economy. Power industry is responsible not only for the economy competitiveness and safety, heat and light in our homes, but it is also responsible for 50 per cent of pollutant emissions and 70 per cent of greenhouse gas emissions (GHG)².

The environmental legislation of the Republic of Kazakhstan discloses the concept of environmental emissions which mean to be emissions, pollutants discharge, environmental emplacement of the production and consumption waste, storage of sulfur in the open air. Companies that operate such facilities must have an environmental permit in order to make the environmental emissions.

Permits for environmental emissions are divided into four categories which are divided

¹ Presidential Decree of the Republic of Kazakhstan No. 577 dated May 30, 2013

² Article “What is a “green economy?”//Website greenkaz.org

into five classes based on conditions of the sanitary classification of the industrial facilities.

Authorization document according to the Kazakh Environmental Code specifies the amount of pollutants (emissions) emitted by the nature users per year. In other words this establishes a certain annual limit for emissions.

Market mechanism has been introduced in order to regulate pollutant emissions taking into account the economic interests of the companies concerned. Thus, in case a company do not use the whole extent of emission limits, it has an opportunity for selling a part of such limit. A part of the emission limits is sold by concluding an appropriate purchase-sale agreement; therefore this fact is a reason for renewal of the environmental permits.

However, Kazakh Legislation does stipulate some restrictions on sale of the emission limits, for example:

- emissions trading is only allowed with regard to those emissions that belong to the same hazard class;
- within the term of validity of the environmental permits³.

Thus, subject to observance of the restrictions listed above, entrepreneurs are entitled to sell their emission limits.

As a conclusion, we would like to note that despite the continuous development of new technologies which ensure the reduction of the environmental emissions, at this stage of development of the Green Economy in Kazakhstan, the possibility for alienating the emission limits can be considered as a (intermediate) solution which allows to preserve the balance between preservation of the environmental interests and interests of companies.

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³ Further exceptions are omitted for reasons of clarity

→ Kazakhstan

Changes in the Limitation Period

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Changes in the limitation period in terms of the tax legislation are expected from January 1, 2020 these changes will affect all small, medium and large business entities of the Republic of Kazakhstan (RoK).

Changes in the limitation period in terms of tax legislation will be considered in more details below. According to the Tax Code of the RoK dated December 25, 2017 the limitation period is five years. However, as a result of a change of law **since the January 1, 2020**, the limitation period on tax liability and claims will be **three years**.

However, the current limitation period of five years will be valid for taxpayers to be monitored or those operating under the subsoil use agreements, in particular for oil and gas. This exception is to be understood in the light of the fact, that most of the Kazakh household is fed by tax revenue from the oil and gas sectors.

In accordance with § 48 of the Tax Code the limitation period on tax liability and claim shall be deemed to be a period of time within:

1. tax authority has the right to correct an already incurred and repaid tax liability;
2. taxpayer (and so-called tax agent) is obliged to submit tax reporting and has the right to make changes and additions to the tax reporting, and to revoke his already submitted tax reporting;
3. taxpayer (and so-called tax agent) has the right to demand to offset and/or to refund of taxes paid as well fines.

Term of the limitation period shall start after the end of the relevant tax period. The tax period, depending on the type of tax, is divided into quarterly and annual.

By the tax audit the limitation period shall start upon the date of delivery of the order. For example, by the tax audit in 2019, the period from January 1, 2014 to December 31, 2018 will be examined. By a tax audit in 2020, an audited period

will be shortened to three years – so, from January 1, 2017 to December 31, 2019.

The Tax Code of the RoK envisages the **extension of the limitation period**, e.g. in the following case⁴:

The limitation period will be extended, for example for another one year, if the company provides in 2018 additional tax reporting for 2014, according to which the limitation period expires in 2019, the limitation period will be extended to 2020 (acc. § 48 Point 7 No.1).



Moreover, the tax legislation of the RoK envisages the temporary **suspension of a limitation period**.

The limitation period is interrupted as follows:

The period of limitation shall be suspended, if the taxpayer disagrees with (preliminary) results of tax audit. The (preliminary) results of the tax audit must be communicated to the taxpayer by the tax authority no later than five working days before the end of the tax audit. From this moment the taxpayer may submit his objections within a period of 15 working days. Therefore, in this case, the limitation period is suspended for 20 business days.

We would like to note that the legislative changes are to be introduced will not affect the deadlines for carry forward of losses from the business activities. Business activity losses carried forward to the next ten years inclusive can be used to reduce the total annual income.

⁴ P.1 Article 48 Tax Code of the Republic of Kazakhstan

We are glad to explain the limitation periods relevant for your company or a possibility of a loss carry forward.

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Acknowledgement and execution of the court decisions of foreign countries or arbitration

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Execution of the court decisions and arbitration is an important condition for effectuation of justice, protection of rights and legitimate interests of individuals and legal entities for confidence-building for Uzbekistan as a constitutional state on the global stage.

As opposed to the previous Code of Commercial Procedure, the new final and binding Economic Procedural Code of the Republic of Uzbekistan which came into force on April 1, 2019 has a specific chapter dedicated to the proceeding on cases of acknowledgment and execution of decisions of the foreign courts and arbitration.

Decisions made by the foreign courts and arbitration on disputes and other cases arising in the economic sector are acknowledged and executed (enforced) by the economic courts of the Republic of Uzbekistan, if acknowledgment and execution of such decisions is prescribed by the relevant international agreements and legislation of the Republic of Uzbekistan.

Between the CIS member-states exists for example the Agreement “On the settlement procedure of economic disputes” dated March 20, 1992 which has been ratified by the Republic of Uzbekistan on May 6, 1993. The CIS member-states mutually acknowledge and execute final court decisions.

According to the New York Convention on the acknowledgement and execution of the arbitration of foreign countries, arbitration are mutually recognized and executed in the Member States of this Convention. As of 2018, 159 countries are the parties to the Convention. Uzbekistan has adhered to this Convention on December 22, 1995.

It is important to distinguish between the terms “court” and “arbitration court”. The court means to be a competent foreign governmental authority which resolves and settles a dispute between parties. The foreign arbitration court means to be the foreign non-governmental organization acting as rule on a permanent basis in order to resolve the dispute between the parties.

Decision of the foreign court or arbitration may be presented for it’s for acknowledgment

and execution within three years upon its effectiveness date, unless otherwise provided by the international agreement. If the specified term has expired or the decision has not yet entered into force, its acknowledgment and execution will be denied by the member-state.

Petition for acknowledgment and execution of decision of the foreign court or arbitration shall be filed by the applicant to the accordingly competent Economic Court of the (autonomous) Republic of Karakalpakstan, individual Uzbek regions and Tashkent city, at the location or place of residence of a debtor, or at the place of state registration of a debtor, if the location or place of residence of debtor is unknown. In this case it is relevant to note that the inter-district, district (municipal) economic courts are outside the jurisdiction.



Petition for acknowledgment and execution of decision of the foreign court or arbitration must be filed in writing and signed by the applicant or its representative.

Petition must specify the name of the economic court the petition is filed to, name and location of the foreign court or arbitration, its membership and other information.

A petition must also be accompanied by other documents in accordance with Articles 251, 252 of the Code of Economic Procedure.

Petition for acknowledgment and execution of decision of the foreign court or arbitration shall be considered at the court session within a period not exceeding six months upon the date of its presentation to the economic court. Persons

involved in the proceeding shall be notified about time and place of the court session. Non-appearance of persons duly notified about time and place of the court session shall not be considered to be an obstacle for consideration of a case. Thereupon, the court decides on the acknowledgment of the foreign court verdict and the granting of an enforcement order.

It should be noted that, based on our experience, the process of acknowledgment of decisions of the foreign courts or arbitrations might be time-consuming and diligent.

Therefore, we always recommend hiring an expert advisor, who oversees the deadlines as well as takes over communication with court to speed the process up.

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→ About us

Rödl & Partner – The agile caring partner for Mittelstand shaped world market leaders

As attorneys, tax advisers, management and IT consultants and auditors, we are present with 111 own offices in 50 countries. Worldwide, our clients trust our 4.900 colleagues.

Rödl & Partner assists you in Kazakhstan and Uzbekistan from our offices in Almaty and Tashkent. Our team of Kazakh, Uzbek and German attorneys, auditors and tax consultants has successfully supported our clients since 2009 in all investment and project-related matters in the two largest and promising markets of Central Asia – in German language and from a single source.

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