

NewsFlash

Tax & Legal

October 2018



Dear readers,

Last July the President signed a new Law on Currency Control and Currency Regulation (hereinafter - the "Law"). The Law will replace the current Law on Currency Regulations adopted in 2005. The main purpose of the Law is to expand

the monitoring of foreign currency operations and to decrease the volume of the foreign currency transactions in Kazakhstan. In this issue, we offer you an overview of some of the most significant, in our view, developments related to the adoption of the Law.

Definitions

The new Law extends the Terms and Definitions section and introduces some new definitions. One of the developments is that a resident's (nonresident's) transaction with electronic money issued by a nonresident (a resident) is regarded as a foreign currency transaction. In addition, the Law enlarged the list of the foreign currency transactions with a transfer of foreign currency assets to trust management or under a brokerage agreement.

Separate part of the Terms and Definitions section outlines the basic terms used for the classification of foreign currency operations:

- Equity participation,
- Capital movements,
- Financial loans,
- Foreign financial organizations,
- Foreign non-financial organizations.

The Law also states that a branch of a foreign bank operating in Kazakhstan is regarded as an authorized bank subject to the currency regulations similar to Kazakh banks.

The Law introduced significant changes to the determination of the residency status for foreign organizations. Now, in addition to Kazakhstan entities, the following organizations are recognized as residents for foreign currency regulation purposes:

- A branch of a foreign financial organization carrying out banking and/or insurance activities in Kazakhstan (starting from 16 December 2020);
- A branch (a representative offices) of a foreign non-financial organization, constituting a Kazakh permanent establishment of the organization under Kazakhstan tax legislation, except for a branch (a representative offices) regarded as a non-resident under an international agreement signed by Kazakhstan;
- An international organization located in Kazakhstan, if the corresponding international foundation agreement regards the organization as a resident of Kazakhstan.

The Law stipulates that the following organizations are regarded as nonresidents:

- Foreign legal entities and organizations and their branches (representative offices) not creating a permanent establishment in Kazakhstan under Kazakhstan tax legislation;
- Branches (representative offices) of foreign nonfinancial organisations recognised as nonresidents for the foreign currency regulations purposes under agreements concluded with Kazakhstan before the Law came into effect. The list of such branches (representative offices) will be approved by a Governmental resolution.

As the result of these changes, resident branches and representative offices of foreign organizations will be subject to Kazakh foreign currency regulations similar to Kazakh entities and will be required to carry their operations in Kazakhstan in Tenge (except for transactions with other foreign branches / representative offices).

The procedure for the determination of the residency status for individuals remain unchanged – an individual not falling within the definition of a resident is regarded as a nonresident.

Domestic Foreign Currency Market

A new section “Domestic currency market” outlines provisions regulating foreign currency transactions within Kazakhstan. It establishes the National Bank authorities to regulate local cash and noncash foreign currency exchange operations and the requirements to cash foreign currency exchange activities.

To monitor local noncash foreign currency exchange operations, the National Bank will approve rules for the foreign currency operations in Kazakhstan establishing:

- procedure for noncash purchase and realization of foreign currency in Kazakhstan;
- requirements to resident legal entities (except for the authorized banks) to inform the National Bank of the purpose of the foreign currency purchase in Kazakhstan and the use of the purchased foreign currency;
- threshold amount for the foreign currency purchase triggering the requirement to inform the National Bank.

To enhance the transparency of non-bank exchange offices providing only cash transactions, their qualification requirements will be approached to the general standards applicable to other financial institutions. In particular, non-bank exchange offices will be required to disclose the sources of their contributions to the charter capital. In addition, the Law prohibits non-bank exchange offices from having stakes (shares) of other legal entities. The Law entitles non-bank exchange offices to purchase and sell refined gold bars issued by the National Bank.

Foreign Currency Regulations

The Law expanded the list of permitted foreign currency transactions between residents by adding the following:

- transactions between branches (representative offices) of foreign entities;
- transactions related to transportation, storage and realization of mineral resources that the state's authorized recipient received from a subsoil user as a settlement of the subsoil user's tax liabilities;
- payments of individuals for goods, works or services in SEZ “Khorgos International Centre of Boundary Cooperation”;

- transactions between professional securities market participants and individuals or legal entities under the brokerage service agreements;
- transactions where one of the parties are residents acting under the laws or acts of the President adopted before the Law came into force.

The new Law reserves the requirement to repatriate the national or foreign currency on cross-border deals within the deadlines established by the related foreign trade agreements. In addition to the current legislative requirements, the Law prohibits a resident from transferring its claim against a nonresident under a cross-border contract to another nonresident on the gratuitous basis. The National Bank will establish criteria (including a threshold value of a cross-border contract) triggering the requirement to control the currency repatriation under the cross-border contract.

Registration and Monitoring of Foreign Currency Transactions

The Law abolishes existing registration and notification procedures for foreign currency transactions. Instead, the Law introduces a single registration procedure for residents' (except for banks and branches of foreign organizations) cross-border contracts and accounts in foreign banks. The registration procedure includes an assignment of a registration number to a cross-border contract and/or a foreign bank account for the foreign currency operations accounting and reporting purposes. Residents (except for banks and branches of foreign organizations) will apply to the National Bank or an authorized bank in Kazakhstan to register a cross-border contract and/or a foreign bank account.

The National Bank will register:

- capital flow contracts in foreign currency,
- residents' accounts in foreign banks,
- export and import contracts, if they are settled in foreign banks.

An authorized bank will register:

- export and import contracts, if they are settled in the authorized bank,
- capital flow contracts in foreign currency also providing for export and import, if they are settled in the authorized bank.

The Law extends the authority of the National Bank to monitor foreign currency transactions. Now, all cross-border transactions exceeding a certain threshold will be subject to the statistical monitoring.

Residents (parties to cross-border contracts and/or holders of foreign bank accounts) will be required to provide to the National Bank information and reports on transactions conducted under the registered cross-border contracts and/or accounts in foreign banks. Rules for the monitoring of foreign currency transactions will establish forms of the reports and the filing deadlines. The rules will also determine:

- the procedure for the obtaining registration numbers by residents;
- terms and criteria, including a threshold for contract value, triggering the registration requirement;
- exemptions from the registration.

The authorized banks will be required to notify the National Bank of foreign currency transactions equal or exceeding a certain threshold. Rules for the monitoring of foreign currency transactions will establish the notification procedure, reporting forms, filing deadlines and the value of the threshold initiating the notification requirement for foreign currency transaction.

In addition to banks and residents, branches (representative offices) of foreign non-financial organizations operating in Kazakhstan for more than a year will be required to report to the National Bank certain transactions with residents and nonresidents, including upon a request of the National Bank. The National Bank will issue rules stipulating the reporting procedure and qualifying activities of branches (representative offices) of foreign non-financial organizations subject to the reporting obligations.

Currency control

The Law specifies in a separate article the currency control procedures for financial organizations and other residents and non-residents performing foreign currency transactions.

An important development is an introduction of control over foreign trade transactions that may be intended to move capital out of the country. The Law establishes a list of foreign currency transactions that may be aimed at the capital outflow from Kazakhstan. Such transactions, in particular, include financial loans not implying transfer of funds due from nonresidents to bank accounts in Kazakhstan banks and deals where the settlement period of debts from nonresidents to residents exceed 720 days.

The Law provides for certain exemptions for the Astana International Financial Centre and SEZ “Korgos International Centre of Boundary Cooperation” as they qualify for favorable currency regulation procedures under special legislative acts of Kazakhstan.

The Law will come into force on 1 July 2019, except for the provision recognizing branches of foreign financial organizations as residents that will come into force on 16 December 2020.



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