

## Tax and Investment Guide

### Reach, relevance and reliability



The information given in this document is of a general nature and should be treated as such. Please consult with an expert before taking any action based on it.

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This guide is designed as a basic reference guide to Kyrgyzstan's tax and legal environment for entities interested in doing business in Kyrgyzstan.

The information in this manual is not exhaustive. Legislation and its interpretation change frequently in Kyrgyzstan and you should seek professional advice relating to your specific circumstances before making business decisions. Deloitte accepts no responsibility for the consequences of acting on the basis of this guide without seeking such advice.

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# Foreign investment regime

## General

The Government of Kyrgyzstan has placed paramount importance on attracting foreign direct investment (FDI) in order to ensure sustainable economic growth and modernisation through the influx of foreign capital, technology and expertise.

The Foreign Investment Law was adopted in March 2003 and has provided an open and liberal regime for FDI, including guarantees of national treatment, non-expropriation, free repatriation of funds, freedom of monetary transactions, stability in the legal regime, free access to open-source information, observance of intellectual property rights and access to international arbitration.

As a result of the market reforms and government efforts to encourage investment, the annual volume of direct foreign investment has increased, rising to USD 828 million in 2012 compared to USD 600 million in 2010<sup>1</sup>. During the last few years, capital has been invested primarily in the financial, manufacturing and mining sectors.

## Stability of legislation

The Investment Law stipulates protection against adverse changes in investment, tax and customs law for a 10-year period following the investment. However, its guarantees do not extend to changes in legislation related to matters of national security, environmental protection and public health.

## National treatment

The Investment Law provides for guarantees for national treatment and non-discrimination among foreign investors. Generally, Kyrgyzstan does not restrict investment in any sector; however, restrictions exist on foreign ownership of land and dwelling in Kyrgyzstan.

Despite the general guarantee, at present there is a possibility that practices could be restricted in certain sectors. In practice, access to markets, credit and other business operations is often impeded by licensing and other regulatory requirements.

## Nationalisation/expropriation

The current law protects foreign investment against nationalisation and expropriation. Direct expropriation may take place only in the public interest on a non-discriminatory basis and with the payment of "prompt, adequate and effective" compensation. Compensatory payment must be at fair market value with interest and denominated in freely-convertible currency, and must include interest calculated based on the London Interbank Offered Rate (LIBOR). Bilateral investment treaties should also refer to compensation in the event of expropriation.

## Repatriation of profit

Foreign investors are entitled to repatriate profits as dividends, interest and other forms of income.

## Settlement of disputes

The Investment Law allows foreign investors involved in disputes with the State to obtain free access to international arbitration at the International Centre for Settlement of Investment Disputes or an arbitration tribunal established under the arbitration procedures of the United Nations Commission for International Trade Law.

## Exchange control

Kyrgyzstan, or the Kyrgyz Republic ("KR"), has a liberal exchange system, and there are generally no restrictions on converting or transferring funds (associated with cross-border transactions) into freely-usable currency and at the legal, market-clearing rate. Foreign exchange is widely available, and the local currency, the Kyrgyzstan Som (KGS), is freely convertible at banks and exchange offices.

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<sup>1</sup>Data of the KR National Bank, <http://www.nbkr.kg>

# Type of business presence

## General

The main types of business organisations in Kyrgyzstan are limited liability companies, open and closed joint stock companies, partnerships, sole proprietorships, and branches and representative offices of foreign companies. Limited liability companies and open and closed joint stock companies constitute separate legal entities.

## Limited liability company (LLC)

The most flexible type of company in Kyrgyzstan is a limited liability company. In accordance with recent amendments to civil legislation, the minimum capital requirements for an LLC have been abolished. In general, the equity participation of the owners is determined based on their capital contribution, unless otherwise agreed by the participants.

The main features of a LLC are as follows:

- An LLC has the right to engage in any type of activity not prohibited by the domestic legislation and, accordingly, may obtain a license to do so when required by law;
- Participants have limited liability which does not exceed their contribution to the company;
- An LLC is not required to issue shares; instead its participants contribute to the charter capital. Financing is possible by the participants through contributions to the company's property ;
- Participants govern the LLC through participants' meetings;
- Participants elect an executive body (sole or collective);
- Without the consent of other participants, a participant is entitled to leave the company and to be paid its pro-rata share of the net assets;
- Participants enjoy the right of preemption in acquiring the contributions of fellow participants;
- An LLC with one participant may not act as the sole participant of another LLC;
- The number of participants may not exceed 30.

## Joint stock company (JSC)

The minimum charter capital of a JSC is set at approximately USD 2,200 and should be fully paid in.

**An open joint stock company** ("OAO") may have an unlimited number of shareholders. Subject to elaborate disclosure requirements, an OAO is the only form of legal entity whose shares may be openly traded similar to a western "public" company. An OAO that has 500 shareholders or more and has carried out at least one public placement of securities must publish an annual report on its financial and business performance.

**A closed joint stock company** ("ZAO"), which is the most common type of JSC, is limited to a maximum of 50 shareholders. There is no obligation to publish accounts. A ZAO is often the structure preferred by minority partners in a joint venture as the JSC Law grants greater rights to minority shareholders than the law governing an LLC. A ZAO is the preferred corporate vehicle for foreign investors.

The main features of a ZAO are the following:

- A ZAO has the right to engage in any type of activity not prohibited by the domestic legislation and, accordingly, may obtain a license to do so when required by law
- Shareholders have a preemptive right of purchase with respect to ZAO's shares; a ZAO may not conduct an open subscription of shares to an unlimited group of persons
- If the number of shareholders exceeds 50, it should be reorganised into an OAO
- Shareholders govern the ZAO through shareholders' meetings, which must be held at least once a year
- One of the responsibilities of the shareholders' meeting is the election of an executive body (sole or collective).

### Branch and representative office

A foreign company may establish a representative office (RO) or branch in Kyrgyzstan in order to represent the interests of the company in the country. Representative offices and branches are not recognised as separate legal entities.

A representative office may be established for representative purposes only (marketing and information gathering, etc.). A branch may perform all or part of the legal entity's functions, including, but not limited to, representative functions.

### Registration requirements

Kyrgyzstan has implemented a simplified system of legal entity registration. The recently adopted Law "On State Registration of Legal Entities, Branches and Subsidiaries<sup>2</sup>" provides for a "one-stop" registration procedure through the authorities responsible for distributing the required documentation to the other bodies.

The registration procedure is comprised of the following stages:

1. Internal corporate procedures (resolutions etc.);
2. State registration;
3. Manufacturing of a stamp.

Under the new rules, registration with the Social Fund and tax authorities is not required; however, joint stock companies are required to register their share issue with the Supervision and Regulation of the Financial Market Service, which lengthens the time required for registration.

### State registration of a branch/RO of a foreign legal entity

The following documents must be submitted to the justice authorities:

- Application;

- Extract from the Decision of the head entity (HE) to incorporate a branch/RO, to approve the Regulation on a branch/RO, to appoint the Head of a branch/RO, etc.;
- Regulation on a branch/RO, a document describing the essential provisions regulating the activities of a branch/RO, such as the rights and obligations of the branch/RO, legal address, name and legal address of the HE, branch/RO longevity, the aim and authorities of the branch/RO, etc.;
- Constitutive documents of the HE. The constitutive documents must be translated into Russian or Kyrgyz and the translation must be notarised.



<sup>2</sup>#57 dated February 20, 2009

# Employment regulation

## General

The Kyrgyz Labour Code, adopted on 4 August 2004, applies to all employment relationships in Kyrgyzstan and is mandatory for all employers and employees, including Kyrgyz nationals, foreign nationals, stateless persons and employees of foreign international organisations and legal entities.

## Employment agreement

Employment relations are formalised in the labour agreement between an employer and an employee. An employment agreement must contain certain provisions found in the Kyrgyz Labour Code.

Employment agreements may be concluded for either an indefinite or fixed term. An indefinite term employment agreement is the default option under the Labour Code while a fixed-term agreement may only be concluded if certain legislative requirements are met. Employees have the right to conclude employment agreements with several employers simultaneously.

Specific provisions for the termination of employment agreement are stipulated in the Labour Code. Employees can terminate their employment at any time by giving two weeks' prior written notice to the employer.

If employment is terminated due to staff redundancy or liquidation of the company, the employees must be notified personally at least one month before the actual termination.

Where an employment is terminated due to the liquidation of a company, staff redundancy or reorganisation of the company, employees should be paid compensation of no less than two months' average salary.

## Employment visas and permits

The employment of foreign nationals in Kyrgyzstan is governed by immigration and labour law.

A Kyrgyz company or a Kyrgyz branch or a representative office of a foreign company can only employ foreign nationals if:



- the employer has obtained a permit to hire foreign workers;
- the employer has obtained an individual work permit for the foreign national.

The issuance of permits is limited by the quotas for hiring foreign workers that are determined annually by the Government of Kyrgyz Republic.

In practice, in order to employ a foreign national, the employer must demonstrate that it has a special need for the foreign national that cannot be satisfied by employing Kyrgyz nationals.

## Permit to hire foreign workers

Currently, immigration law does not differentiate between a Kyrgyz legal entity and a separate subdivision of a foreign company, such as a representative office or branch, in terms of regulations related to hiring foreign staff for work in the KR.

No permission is required to hire foreign workers if those workers fall into one of the following categories:

- Foreign nationals with refugee status;
- Foreign nationals receiving political asylum in Kyrgyzstan;
- Foreign nationals with the right to permanent residence in Kyrgyzstan;

- Members of the diplomatic corps, accredited in Kyrgyzstan;
- Employees of foreign manufacturers or suppliers of technical equipment who are performing installation of equipment delivered to Kyrgyzstan;
- Accredited correspondents and journalists;
- Students working during vacations or at universities in their free time;
- Other foreign nationals, based on international treaties between Kyrgyzstan and foreign states.

### **Work permit for a foreign employee**

A permit for a foreign employee is issued to a domestic employer. The domestic employer must submit an application and other documents regarding a foreign employee personally. Both the permit for the employer and the work permit for the foreign employee are normally issued for a period of one year and may be extended, or new ones may be obtained.





# Taxation

## General

Kyrgyzstan adheres to the continental system of law. The Parliament (the “Jogorku Kenesh”) is the only authority that has the right to establish laws. There is no court precedent doctrine in Kyrgyzstan and, therefore, court decisions could be regarded as recommendations only. As required by the Constitution of the KR, taxes or levies, as well as sanctions for tax violations, may only be established by laws enacted by the Jogorku Kenesh.

According to the current legislation, laws in general and tax laws in particular enter into effect only after their proper promulgation.

A new Tax Code was adopted in October 2008 and entered into force on 1 January 2009. The main goals of the reformed Tax Code are to develop a fair and reasonable tax system, ease the tax burden on business, simplify tax procedures, encourage saving and investment and the economic development of the country.

Under the new tax regime, the main taxes applicable to investor activity are as follows:

- Corporate income tax;
- Individual income tax;
- Value added tax;
- Excise tax;
- Property tax;
- Sales tax;
- Land tax;
- Subsoil use taxes (bonus and royalty);
- Tax withheld at the source of payment from the income of non-residents.

## Corporate income tax

### Taxpayers

Legal entities (whether domestic or foreign), individual entrepreneurs and tax agents paying Kyrgyz-source income to a non-resident legal entity are liable to pay Corporate income tax.

Corporate income tax is not levied on agricultural producers or legal entities/individual entrepreneurs subject to simplified, organisations involved in the gambling and entertainment industry, or credit unions.

To be subject to Corporate income tax, foreign legal entities must carry out activities in Kyrgyzstan through a permanent establishment or receive income from Kyrgyz sources.

Taxpayers registered in accordance with Kyrgyz legislation are liable for Corporate income tax on their worldwide profits.

Taxpayers may use simplified methods to calculate Corporate income tax if their annual income does not exceed KGS 30 million (approximately USD 640,000).

### Tax rate

The unified Corporate income tax rate is 10%.

The profit of a leasing company is subject to a 5% rate of Corporate income tax.

A 0% Corporate income tax rate applies to corporate entities and individual entrepreneurs engaged in mining gold ore, concentrate, alloy and gold refining.

### Taxable profit

Taxable profit is defined as the accounting profit subject to certain corrections in accordance with the provisions of the Tax Code.

### Income

Income includes both sales income (i.e. total proceeds from the sale of goods, work, services and property rights) and non-sales income. A list of non-sales income is provided in the Tax Code and includes the following:

- Interest income;
- Dividends;
- Royalties;
- FOREX gain;
- Lease or rental income;

- Fines, penalties and interest received as the result of terminating contractual obligations and compensation for losses by a debtor;
- Free transfer of assets;
- Accounts payable written off by a creditor;
- Income from the sale of assets that are not subject to depreciation;
- Insurance payment according to the agreement, except amounts related to insured fixed assets;
- Income received from sale of shares, derivatives, debt securities (less original cost);
- Doubtful debts;
- Subsidies;
- Amounts received in exchange for consent to limit or cease a business activity.

Furthermore, the Tax Code establishes an exhaustive list of income types which are not included in the taxable base, which includes the following:

- Property received as contributions to a company's charter capital;
- Dividends received from domestic companies;
- Property received as contributions to a simple partnership;
- Property received for trustful management;
- Share premium from own shares;
- Interest income and capital gain from the sale of securities of the highest and next-highest categories in the stock exchange listing as of the date of sale;
- Income from the sale of fixed assets by finance lease agreement.

#### **Deductible expenses**

The new Tax Code provides an "open" list of deductible expenses. Costs are deductible as long as they are:

- connected to income-generating activities;
- supported by relevant documentation.

Please see below the information on the limitation of certain deductible expenses.

#### **Business trips**

The Tax Code does not provide any limitations on transportation and accommodation expenses as long as they are properly documented.

Deductions for per diem allowances are currently restricted by the limits established by the Kyrgyz Government. There are country-specific per diem rates for trips to foreign countries.

If a per diem is incurred above the prescribed amount, the employee may be subject to personal income tax on the expenses incurred. This would entail withholding at the source by the employer.

#### **Representative expenses**

The Tax Code lists the following types of representative expenses as deductible:

- Transportation and hotel costs;
- Translation costs.

#### **Interest**

Any interest expenses paid or incurred by the taxpayer in the course of his business activities are generally deductible. However, interest expenses incurred and paid in relation to the purchase or creation of depreciable fixed assets and with an impact on the cost of fixed assets until implementation should increase the value of those fixed assets.

#### **Research and development**

Research and development (R&D) costs are fully deductible.

Mining companies should also create a special reserve of 15% of the taxable base and use it within five years to carry out exploration work. This reserve is also deductible for CIT purposes.

Any of the special reserve not used within five years should be transferred to the state budget.

Geological exploration, research and development and primary mining expenses should be capitalised and depreciated by the maximum rate of 50%.

## Depreciation

The Tax Code identifies depreciable assets, both tangible and intangible, in accordance with the Kyrgyz Law on Accounting with a value exceeding KGS 10,000 (approximately USD 220).

There are five depreciation groups under the Tax Code. In calculating depreciation charges regarding a depreciable asset, a taxpayer must use the declining balance method. The straight-line method is used for buildings and other structures after 20 years of operation. In certain limited circumstances such as financial leases, taxpayers are allowed to apply special coefficients to increase the normal depreciation rates.

The depreciation rates are as follows:

Group	Types of assets	Depreciation rate
1	Passenger cars, automobiles, peripheral equipment, office machinery and data processing equipment	30%
2	Trucks, trailers, buses; construction machinery and equipment for all industry; office furniture; mining exploration expenses; intangible assets	25%
3	Assets not included in other groups	20%
4	Railway, sea and river transport, power equipment, turbine equipment, electric motors and diesel generator sets	10%
5	<b>Main buildings, constructions</b>	<b>10%</b>

## Repair expenses

The Tax Code provides a deduction for expenses incurred in connection with the repair of fixed assets.

The maximum deduction for repair expenses is limited to 15% of the balance of each fixed asset group at the beginning of the current tax period. Excess repair expenses should be added to the costs of the tax depreciation group.

## Loss carry-forward

Losses incurred by a taxpayer as a result of its economic activity may be carried forward for a period of up to five calendar years. The aggregate annual income of the appropriate year shall be decreased by that sum.

## Payments and filings

### Tax period

The tax period for Corporate income tax is a calendar year.

### Tax assessment

The taxpayer is obliged to calculate quarterly advance payments based on the revenue received by taxpayer during the previous reporting period. The advance payment for the reporting quarter is calculated as 1% of revenue amount except of VAT and sales tax .

### Timing

The annual Corporate income tax return is due by 1 March of the following year. Any tax obligations due must also be paid in full by that date.

Quarterly advanced payments must be remitted by the 20th day of the month following the reporting quarter.

## Value added tax (VAT)

### Taxpayers

Payers of VAT in the KR are corporate businesses, including representative offices and branches of foreign companies, individual entrepreneurs registered for VAT purposes, and any person importing goods to the Republic.

A business entity carrying out economic activity is required to be registered for tax purposes in the KR if its total turnover exceeds the registration limit of KGS 4 million (approximately USD 87,000) during a period of no more than 12 consecutive months.

### Taxable supply

VAT is charged on the majority of sales of goods, work and services supplied in Kyrgyzstan, including those supplied free of charge. VAT is also imposed on most imports into Kyrgyzstan. Transfer of property rights and certain self-supplies, such as the transfer of goods and services produced by a taxpayer for internal consumption, are also subject to VAT.

### Place of supply rules

These rules are used to determine whether goods, work or services are supplied in Kyrgyzstan and, thus, subject to Kyrgyz VAT. Goods are considered to be sold in Kyrgyzstan if they are located in Kyrgyzstan and are not being transported outside the country.

Services and work are generally deemed to be supplied at the place of business of the supplier unless another specific treatment is applicable. In particular, specific treatment applies to the following:

- Services related to immovable property and movable property, which are deemed to be supplied where the property is located;
- Health, cultural, sports, arts, educational or tourism services, which are deemed to be supplied at the location where the services are physically performed;
- Services provided by an agent on behalf of a principal; lease of movable property, except for motor vehicles; provision of personnel; consulting, audit, legal, engineering, advertising, information-processing, transfer of rights to intellectual property; processing of goods placed under the customs regime of inward processing. These services are deemed to be supplied at the place of business of the buyer.

### VAT rates

Two basic VAT rates may apply to taxable supplies:

- A 0% rate applies, in particular: 1) to the export of goods except gold alloy and refined gold; 2) to the international transport of passengers, baggage and cargo, except railway transport, transit flight services and services related to international transportation except international railway transportation; 3) to services on power supply of pumping stations;
- A 12% rate applies to all other taxable sales of goods, work and services.

### VAT exemptions

The major VAT-exempt activities are the following:

- Supply of land, residential buildings and premises;
- Supply of agricultural products manufactured from a taxpayer's own primary products;
- Supply of public utility services, pension procurement;
- Financial, insurance services;
- Sales of qualifying medical equipment and its repair, supply of medicaments in accordance with the list approved by Government of KR;
- Local passenger transportation and international railway transportation;
- Supply of gold alloy and refined gold;
- Privatisation;
- Export of work and services.

### Taxable value

The value of a taxable transaction shall be determined on the basis of the price/value payable for supplies or imports which the taxpayer receives or has the right to receive from a customer. The latter includes any duties (except state duties), taxes, and/or other fees, but excludes VAT and sales tax. The taxable value of imported goods is the customs value of those goods. The taxable value of imported goods also includes all transport, insurance and other expenses incurred during their import, as well as the total amount of customs fees and taxes payable upon import of these goods, except for VAT. The amount of VAT payable to the budget on taxable turnover is determined as being the difference between the output VAT accrued on taxable turnover upon issuance of an invoice and the amount of creditable input VAT paid to a supplier. If a taxpayer has an exempt turnover, VAT credit is usually allowable in the proportion of taxable turnover to the total turnover. The VAT amount which is not creditable shall be deducted for Corporate income tax purposes.



### VAT invoices

VAT payers are required to issue a VAT invoice to the recipient of goods, work or services to a buyer at the time of delivery of the goods or services.

### Timing

Payers of VAT are required to file monthly VAT returns and pay the corresponding VAT due to the budget no later than the 25th day of the month following the tax period. A register of VAT invoices issued and VAT invoices on goods (work, services) purchased during the tax period should be submitted along with the VAT returns.

### Reverse charge

The VAT reverse charge was abolished as of 1 January 2009.

### Property tax

#### Taxpayers

The following are subject to property tax:

- Kyrgyz and foreign legal entities;
- Individuals who own movable and immovable property in Kyrgyzstan, including property obtained under financial lease or mortgage agreements.

#### Taxable base

The taxable basis of immovable property is based on the area of the property and is determined using the following formula:

$TB=V*A*Ki*Kr*Kz$ , where

- **V** is the taxable value of 1 m<sup>2</sup> of area, which depends on the operational life and the building materials used, and may vary from KGS 4,000 to 15,000 (approximately USD 90-330);
- **A** is the taxable area of residential premises (excluding non-taxable area which varies depending on a type and a population size of location) or the total area of business premises;

- **Ki** is the industrial index used for business premises, which varies from 0.2 to 1.6; for residential premises  $Ki = 1$ ;
- **Kr** and **Kz** are regional and zone coefficients, which depend on the location of the property. These coefficients may vary from 0.1 to 1.2.

The taxable base for movable property is the engine capacity and operational life.

#### Tax allowances

Under the Tax Code, various types of property are tax-exempted; for example, property belonging to diplomats and international missions and organisations, and the property of disabled individuals/organisations of disabled and handicapped individuals.

Certain categories of taxpayers are eligible for exemptions and deductions.

#### Tax rates

The tax rate for immovable property is set by the Tax Code at 0.35% for residential property and 0.8% for property used in business activities.

The tax rate for movable property varies from KGS 0.05 to 1.8 per cubic metre of engine capacity.

#### Tax payments and filing returns

The tax period for property tax purposes is a calendar year. However, legal entities and individual entrepreneurs must make tax payments for immovable property on a quarterly basis. Individuals must pay tax by 1 September. Tax payments for movable property must be paid by 1 May.

All taxpayers are liable to submit a tax information report by 1 March for legal entities and individual entrepreneurs, and by 1 May for individuals.

# Other taxes

## Sales tax

### Taxpayers

Legal entities, whether domestic or foreign, operating in Kyrgyzstan through a permanent establishment and individual entrepreneurs are liable to pay sales tax.

### Taxable base

Generally, the Tax Code defines the proceeds from sales of goods, work and services, excluding VAT, as the taxable base for sales tax purposes. Special provisions on the taxable base are stipulated for certain types of industries.

### Tax rates

The Tax Code defines the following rates for sales tax:

- For VAT-able (including VAT-exempt) sales of goods, work and services i.e. for VAT payers
  - 1% - for trading activities
  - 2% - for other activities
- For other sales of goods, work and services (for non-VAT payers)
  - 2% - for trading activities
  - 3% - for other activities

### Tax payments and filing returns

Taxpayers are required to report and remit their taxes on a monthly basis, up until the 20th of the month following the reporting month.

## Land tax

### Overview

Land tax is a local tax; therefore, its rates are fixed by local authorities.

### Taxpayers

Land tax applies to legal entities and individuals who own land or hold the rights to the temporary use of land.

### Taxable base

Land tax is levied on the area of land in question. Certain exemptions from land tax are provided with respect to historical or cultural sites, national parks and land used by the state. In cases of joint ownership, the tax base is determined for each taxpayer's proportionate share of the land.

### Tax allowances

Several tax exemptions are available for land occupied, for example, by disabled individuals, retirees, and large families.

### Tax rates

Land tax rates depend on the location and function of land.

### Tax payments and filing returns

Although the tax period for land tax is a calendar year, the tax must be paid three times a year by taxpayers who own agricultural land and quarterly by taxpayers who own other types of land.

In addition, local authorities are entitled to exempt certain categories of taxpayers from land tax.

Taxpayers are required to submit land tax reports by 1 February.

## Excise tax

### Taxpayers

Excise tax is payable by companies and individual entrepreneurs either producing excisable goods or importing and retailing them within Kyrgyzstan.

### Excisable goods

The primary categories of excisable goods are: ethyl alcohol and qualifying spirit-based products, cigarettes and tobacco products, certain oil products, and jewellery.

### Transactions subject to excise tax

Excise tax is generally imposed on excisable goods sold in or imported into Kyrgyzstan.

### **Deductions**

Excise tax paid by a taxpayer on excisable goods that they have purchased may generally be claimed for deduction only if the goods are sold solely for the further production of other excisable goods, and not as a final product.

### **Tax rates and tax liability**

Excise tax rates vary greatly depending on the kind of excisable commodity in question. The rates are periodically adjusted by the Government. The tax base is generally determined by either the quantity of excisable goods or the value of the goods, depending on whether the tax rates are specific (i.e. a fixed amount per unit) or set as a percentage of the sales price.

### **Tax payments and filing returns**

The tax period for excise tax is a calendar month. Deadlines for excise tax payment may vary.

Certain alcohol and tobacco products, both domestic and imported, require an advance payment by way of an excise stamp, which must be attached to each item prior to sale.

All taxpayers are liable to file reports by the 20th of the month following the reporting month.



# Transfer pricing

Transfer pricing rules have been introduced into the new Tax Code. The current transfer pricing provisions allow the tax authorities to review the prices used by taxpayers in the following “controlled transactions”:

- Transactions between related parties;
- Transactions involving the “barter” of goods or services;
- Transactions qualifying as cross-border transactions, i.e. “foreign trade transactions”;
- Transactions without supporting documents to confirm that they took place;
- Transactions with inactive entities/individuals.

If it is established that the taxpayer’s price differs from the market price, the tax authorities have the right to assess additional tax liabilities, late payment interest and penalties based on a price equal to the market price.

Kyrgyzstan uses the familiar methodologies of the OECD guidelines to determine arm’s length prices, as follows: (1) the comparable uncontrolled price method; (2) the resale price method;

and (3) the cost plus method. Preference is given to the first method, while the other two methods may be used only in the absence of comparables, or information about relevant prices in the market in question.

The burden of proof that prices do not meet the arm’s length principle falls to the tax authority.

If the tax authorities determine that the income of an entity is understated as a result of its selling goods at a price lower than the market price, the entity should adjust its income accordingly for the purposes of calculating its tax liabilities. The tax base for other taxes, such as VAT, should also be adjusted. Penalties and interest on overdue tax will be due with regard to any adjustments made.

In order to determine the market price, the following sources of information may be used:

- 1) official sources of information on market prices;
- 2) sources of information on exchange quotations;
- 3) data available from state bodies and other sources of information.





# Kyrgyz-sourced income of non-resident companies

Kyrgyz-sourced income of a foreign legal entity (FLE) which is not attributable to a PE may be subject to withholding tax at source. For taxation purposes, a Kyrgyz entity or an FLE with a registered PE making the relevant payments to an FLE without a PE has the responsibility to act as tax agent. In addition to other requirements, this responsibility implies the obligation to withhold tax from Kyrgyz-sourced income, as long as that income is not connected with a Kyrgyz PE. Failure to do so may lead to fines of up to 50% of the amount not withheld.

The Tax Code defines the term “permanent establishment” as a place of management, subdivision, office, factory, workshop, construction site, mine, plot of land, or any other separate permanent place of activity, through which a foreign company fully or partially engages in business activities in the KR. The term is used exclusively for tax purposes and does not affect the legal status of an entity. The following areas of activity are expressly listed as giving rise to the creation of a PE:

- Exploration for or extraction of natural resources for a period exceeding 183 days within any 12-month period
- Construction, installation, assembly, adjustment, and related maintenance services continuing for 183 days or longer within any 12-month period
- The provision of services, including consulting services, through the engagement of personnel for 183 days or more within any 12-month period

Withholding tax is applied to the following types of Kyrgyz-sourced income:

Rate	Types of income
10%	Dividends, interest
5%	Income from insurance premiums, payable under insurance agreements; international freight; and international telecommunications services
10%	Royalties and copyright royalties
10%	Income from other work and/or services, provided on the territory of the KR

Kyrgyz-sourced income from a leasing company received by a foreign entity is subject to withholding tax at the following rates:

Rate	Types of income
1%	Dividends, interest, income from other work and/or services
0%	Royalties and copyright royalties

Withholding tax is applicable regardless of the form of payment, and includes payments in-kind, or by way of mutually offsetting liabilities between the buyer and seller.

To claim the benefits of a Double Tax Treaty, at the time of payment of the relevant Kyrgyz-sourced income, a foreign legal entity should satisfy the requirements for exemption provided in the Instruction of the Ministry of Finance *On the Application of Double Tax Treaties*.

The non-resident should complete and submit a claim to the tax authorities along with supporting documentation, which should include, among other things, constituent documents, copies of agreements, invoices, and any other relevant documents.

The claim must be approved by the competent authorities in the non-resident’s home country, and should be signed and stamped.

No certificate of residence issued by the tax authorities of a foreign country is acceptable.

A similar procedure is applicable to refunds of previously withheld tax.



# Taxation of individuals

## Personal Income Tax (PIT)

### Taxpayers

Domicile and citizenship are irrelevant for Kyrgyz tax purposes. Both Kyrgyz tax residents and non-resident individuals are subject to Kyrgyz PIT. An individual is considered to be a tax resident of Kyrgyzstan if he or she is physically present in Kyrgyzstan for at least 183 days over a period of 12 consecutive months ending within the current tax period. Tax residents are taxed on their worldwide income, whether paid in cash or in-kind, and on imputed income received during the calendar year.

Individuals who are not considered residents of Kyrgyzstan, i.e. those who spend less than 183 days in Kyrgyzstan over a period of 12 consecutive months ending within the current tax period, only pay tax on their Kyrgyz-sourced income, irrespective of the nature of the income received.

### Income tax rates

The unified tax rate of 10% applies to both residents and non-residents.

### Taxable income

Taxable income is defined as gross income, less allowable deductions and exemptions. For personal income tax purposes, gross income is defined as all income, whether received in cash, in-kind, or in the form of work and services received by a taxpayer.

The tax base for PIT cannot be less than the minimal income index, which is calculated as 40% of the monthly average wage for the previous year, determined based on statistical data provided by the Government of the KR.

Taxable items include, but are not limited to:

- Compensation for employment services, in cash or in-kind;
- Compensation for participation in management;
- Payments made by an employer on behalf of an individual employee for goods, work and services;

- “Imputed income”, such as savings from low-interest loans and gains from the free receipt or discount purchases of goods;
- Insurance compensation;
- insurance premiums paid by an employer for its employees;
- Interests, dividends and royalties;
- Capital gains from the sales of:
  - Vehicles owned for less than one year;
  - Immovable property owned for less than two years;
  - Securities.
- Subsidies, pensions, scholarships, compensation for emotional distress, allowances, or winnings, except those paid from the state budget;
- Income from debt write-offs.

### Deductions and exemptions

The 10% tax rate applies to taxable income after applying the following types of deduction:

- Standard deductions;
- Social deductions;
- Property deductions.

These deductions are not available to non-residents.

### Standard deductions

A standard monthly deduction of KGS 650 (approximately USD 14) is granted to a taxpayer for each month of his/her accumulated income during the calendar year.

An additional monthly deduction of KGS 100 (approximately USD 2) is granted each month for each of a taxpayer’s dependents.

Taxpayers are also allowed to deduct contributions made to the state pension fund and to non-state pension funds, at a maximum rate of 8% of the total taxable income.

## Social deductions

A social deduction may be claimed for educational payments for the taxpayer and his/her dependents, up to the age of 24, at a licensed educational institution, but limited to 10% of total taxable income without this deduction.

## Property deductions

Interest on a mortgage is deductible up to a limit of KGS 230,000 (approximately USD 5,000) per tax year.

## Exemptions

Non-taxable income includes, but is not limited to:

- State allowances, including subsidies, pensions, scholarships, maternity leave and unemployment benefits, as well as payments from the Presidential Fund and the Government Reserve Fund of the KR;
- Certain cash and in-kind distributions, in accordance with legislation, e.g. per diems, allowances for work in high mountains or under hazardous working conditions, special uniforms, footwear, etc.;
- Employer payments for obligatory medical examination and treatment, obligatory insurance payments and premiums, professional education;
- The reimbursement of certain expenses incurred during the course of business trips and supported by the proper documentation;
- Dividends received by a resident individual from Kyrgyz companies;
- Interest from Kyrgyz banks;
- Interest and capital gains on securities, ranked in the highest and the subsequent categories on the stock exchange's listing, as of the sale date;
- Certain property received as a gift or by inheritance, etc.

## Assessment and collection procedures

### Tax returns

Individuals must calculate their income tax liability and file personal income tax returns. A family tax return is also permitted.

An individual who is required to file an income tax return must do so by 1 April of the year following the tax year.

The total amount of tax due, based on a tax return, must be paid no later than 1 April of the following tax year.

### Tax withholding

The most common type of income payment subject to withholding is salary/remuneration paid to the employees of tax agents. Income tax, computed and withheld by an employer, must be remitted to the state no later than the 15th of the month following the month when the income is actually paid.

## Social contributions

### Overview

According to the *Law On Social Insurance*, legal entities, including branches and representative offices of a FLE, and private entrepreneurs are considered to be payers of social contributions. Thus, both a branch and a subsidiary are liable to pay Kyrgyz social contributions, which include Obligatory Pension Contributions (OPS), Obligatory Medical Insurance Contributions (OMIC), and Employees Healthcare Fund Contributions. Kyrgyz employers and employees, as well as foreign citizens permanently residing in the KR, are liable to make social contributions as follows:

- Employers – at a rate of 17.25% of the total amount of an employee's accrued gross remuneration (2% OMIC, 15% OPS and 0.25% of Employees Healthcare Fund Contributions);
- Employees – at a rate of 10% of their gross remuneration.

Social contributions are not due from foreign nationals who do not permanently reside in the KR during their employment with a Kyrgyz entity, i.e. those who are staying in the KR on a temporary basis.

According to the latest amendments (effective as of 1 January 2012), female employees born before 1 January 1969 and male employees born before 1 January 1964 are exempt from Cumulative Pension Fund contributions, and should only pay Pension Fund contributions at the 10% rate.

However, a Kyrgyz employer is liable to pay OPS at their own expense, at a rate of 3% of the gross remuneration paid to a non-resident staying temporarily in the KR.

#### **Payments and reporting**

Taxpayers (employers) are required to file reports with the Social Fund on a monthly, quarterly and annual basis. Social contributions are payable on a monthly basis and must be paid no later than the 15th day of the following month.



# Customs duties

## Customs duties

Customs duties rates are governed by the Law *On Customs Tariffs*, which is revised annually. Import customs duty rates are normally expressed as a percentage of the value of goods imported, known as "ad valorem" duties. However, they may also be expressed as a set monetary amount per unit or kilogram, then being termed "specific" duties. Finally, they may be expressed as the greater of the two, which is known as "combined" duties.

Several "ad valorem" rates of import customs duties are currently applicable in the KR. In the majority of cases these range through 0%, 5%, 10%, up to 15%. Certain goods are exempt from import customs duty.

The rate of import customs duty depends on the exact nature of the goods being imported. Goods are classified based on the International Harmonised System.

Basic import customs duty rates are not constant and may vary depending on the country of origin of the goods, the type of goods and, occasionally, on other factors.

## Value-added tax

VAT of 12% is levied on imports of goods based on the total customs value of the goods, including customs duty, to be paid upon their import into Kyrgyzstan.

## Customs clearance fees

A customs clearance fee of 0.15% is levied on the customs value reflected in the customs declaration, but no more than 2500 fixed indexes or about USD 5,300.

## Determining the customs value

The customs value is defined as the invoice value, increased by the following items:

- Actual costs of transportation, loading, unloading and insurance, incurred up until the goods cross the Kyrgyz border

- Any commission and/or brokers' fees paid
- Fees for intellectual property rights relating to the goods, which must be paid as a condition of their import

## Most favoured nations

Kyrgyzstan became a member of the WTO in November 1998. The relieved duty rates apply to goods manufactured in WTO member-states and those countries that have signed trade agreements with the KR and hold the status of most favoured nation (China, Russia and Georgia). Relieved import duty rates may also apply to goods manufactured in countries that have entered into free trade agreements with Kyrgyzstan (e.g. Azerbaijan, Armenia, Belarus, Kazakhstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine). Tariff preferences will be granted if "direct purchase and shipment" rules are followed.

## Export customs duties

Export customs duties are seasonally introduced by the Kyrgyz Government, and are currently levied on some agricultural products, gold and coal.

## Special customs regimes

There are a number of special customs regimes that provide for either full or partial exemption from import customs duties and VAT. For example, full relief may be granted on goods that are imported into the KR for processing and which are then subsequently exported.

Goods may also be imported under a temporary import regime. This regime provides for either full or partial exemption from import duties and VAT for certain goods that are temporarily imported into the KR. Once the specified time period (usually two years) has expired, the goods must either be exported from the KR or transferred to a different customs regime.

The customs free zone regime may be applied within certain Special Economic Zones (SEZ), resulting in exemption from import customs duties and taxes on imported raw materials, components, etc. until the processed products are moved out of the SEZ.

# Tax administration

## Overview

The new Tax Code defines the following fundamental principles of Kyrgyz taxation:

- Tax legislation in the KR is based on the principles of integrity, legality, obligation, determinacy and fairness of taxation and the tax system;
- All ambiguities and contradictions in the Kyrgyz tax legislation will be interpreted in favour of the taxpayer;
- Tax laws increasing rates or introducing new taxes or sanctions on taxpayers may not be applied retroactively;
- The presumption is made that a taxpayer acts or fails to act within the law and is basically innocent of any infringement, placing the burden of proof on the tax authorities;
- The tax authorities are required to maintain the confidentiality of taxpayer-related information.

The enactment of the Tax Code greatly increased the rights of taxpayers and clearly defined the rights and obligations of the tax authorities, while also strengthening tax officials' responsibility for violations of tax legislation.

## Tax audits

According to the Tax Code, the tax authorities are entitled to carry out two main types of tax audits with regard to both individual and corporate taxpayers, namely desk tax audits and field tax audits.

### Desk tax audit

A desk tax audit is generally carried out by the tax authorities in their own offices on the basis of tax returns, financial statements and other relevant documentation submitted by a taxpayer.

### Field tax audit

A field tax audit is carried out at the office or business premises of a taxpayer at the initiative of the head of the auditing tax body.

A field tax audit may not last for more than 30 calendar days, or 50 calendar days for "large taxpayers".

## Limitations on tax audits

The Tax Code establishes certain provisions limiting the powers of the tax authorities in relation to tax audits. Field tax audits may be initiated only with respect to the three year period ending on the start date of the audit. However, the limitation period for tax violations is fixed at 6 years from the date that the violation took place.

The tax authorities cannot conduct more than two field tax audits within a 12-month period.

## Penalties and interests

The Tax Code sets out the following sanctions, which may be imposed on taxpayers for tax violations:

- Late payment of taxes is subject to interest at 0.09% for each day of arrears. The total amount of interest may not exceed the amount of unpaid tax.
- The evasion of tax registration, i.e. conducting business activities without registering with the tax authorities, is subject to a fine equal to the potential tax liabilities, but no less than 50x the calculated index (approximately USD 110).
- Tax understatement - if a taxpayer understates its tax liabilities, they are subject to one of the following fines:
  - up to 2% of aggregated annual income, calculated for CIT purposes, with no fines;
  - 2-5% of aggregated annual income, with a fine of 50% of the understated tax amount;
  - more than 5% of aggregated annual income, with a fine of 100% of the understated tax amount.

# Mining taxation

## Overview

Taxpayers engaged in mining and sale of gold ore, concentrate, alloy and gold refining are liable to pay income tax.

## Tax base

The tax base is the value of gold alloy and refining gold based on the sales price net of VAT and sales tax, or the cost of gold production in concentrates and other intermediate products containing gold, calculated using world prices according to the procedure established by the Government of the KR.

## Tax rates

The income tax rate varies according to changes to the gold price.

Price of gold per 1 troy ounce (USD)	Income tax rate (%)
1201 - 1300	1
1301 - 1400	3
1401 - 1500	5
1501 - 1600	7
1601 - 1700	9
1701 - 1800	11
1801 - 1900	13
1901 - 2000	14
2001 - 2100	15
2101 - 2200	16
2201 - 2300	17
2301 - 2400	18
2401 - 2500	19
2501 and above	20

## Payments and filings

### Tax period

The tax period for income tax is a calendar month.

### Tax assessment and timing

Income tax is assessed monthly, with payment due within 20 days following the reporting month. Tax returns should be submitted before the 20th of the month following the reporting month.



# Taxation of subsoil users

The following is a brief description of the special taxes levied on subsoil users who hold licenses to participate in the exploration and development of subsoil in Kyrgyzstan.

## Bonus

A bonus is a one-time payment made by a subsoil user for the right to prospect and exploit mineral deposits.

## Taxpayers

The bonus applies to local companies and foreign companies operating through a PE in the KR, as well as individual entrepreneurs, who hold a mining license.

Change to the share capital by 10% or more on the same footing as to obtain a new license, and is the basis for payment of the bonus in accordance with the tax legislation of the Kyrgyz Republic, with the exception of companies listed on stock exchanges.

The object of bonus taxation is:

- 1) development of mineral deposits
- 2) mineral deposit exploration with estimated reserves
- 3) mineral deposit research in areas with inferred and expected resources
- 4) withdrawal (extract from the subsurface) of groundwater
- 5) drilling of hydrogeological boreholes.

## Tax base

The bonus is levied based on the volume of mineral reserves and expected resources according to the State cadaster on mineral deposits, and the drilling depth of hydrogeological boreholes.

## Tax rate

The amount of the bonus is set by the Government of the KR on all type of minerals, and depends on the stage and the size of the field and the drilling depth of hydrogeological boreholes.

On mineral deposits put up for tender, the bonus rate is established separately by the Government of the Kyrgyz Republic for each field.

## Tax payments and filing returns

Payers of the bonus are required to file an appropriate report and pay the corresponding amount due to the budget within 30 days of receiving the license for the exploration and development of subsoil in the KR.

## Royalties

Royalties are regular payments made by subsoil users for the right to prospect and exploit mineral deposits.

## Taxpayers

Royalties apply to local companies and foreign companies operating through a PE in the KR, as well as individual entrepreneurs, who execute:

- development of mineral deposits;
- withdrawal (extract from the subsurface) of groundwater;
- extraction of oil and gas during the process of test searching and prospecting for hydrocarbons;
- single mining for experimental-industrial testing and/or the prevention or elimination of emergency situations.

## Tax base and rates

The royalty tax base is:

- proceeds (less VAT and sales tax) received from the sale of minerals or products resulting from the processing of minerals;
- volume of products sold in bulk;
- volume of water extractable from the subsurface by water meters, with the exception of specialised water supply organisations.



Royalties are fixed from the volume of the sampled water at the following rates:

Minerals	Measure unit	Tax rate (KGS)
Mineral water and fresh water used for drinking	cubic metre	200
Mineral water and thermal water used for balneotherapy	cubic metre	0.05
Thermal water used for heating	cubic metre	0.12
Drinking water	cubic metre	0.15
Fresh water for technical use	cubic metre	0.10
Fresh water used for agriculture	cubic metre	0.01

Royalties are established from sales proceeds on the following minerals:

Minerals	Tax rate
<b>Gold, silver and platinum</b>	
• fields with reserves of more than 10 tons	5%
• fields with reserves of 3 – 10 tons	3%
• fields with reserves of less than 3 tons	1%
Gypsum	6%
Natural stones used for the production of facing materials	12%
Bituminous and brown coal	1%
Special water supply organisations	5%
Other minerals	3%

### Tax payments and filing returns

Subsoil users are liable to report and remit their taxes on a monthly basis by the 20th of the month following the reporting month.

### Stability of tax regimes

The new Tax Code controls the stability of the tax regime for subsoil users.

As a result, subsoil users are guaranteed against increases in tax rates applicable at the date the license agreement is concluded; however, this applies for no more than 20 years.



# Special tax regimes



Special tax regimes are divided into the following types:

1. The special tax regime for small businesses, which includes:
  - The patent special tax regime (available for individual entrepreneurs not registered for VAT purposes only);
  - The simplified tax regime, based on single taxation.
2. The obligatory patent for specific types of business activities (gambling, recreation, exchange offices, etc.);
3. The special tax regime, based on the tax contract signed between the tax authorities and the taxpayer;
4. The special tax regime for legal entities registered in SEZs.

The simplified tax regime and the regime based on the tax contract cannot be applied to financial and insurance institutions, investment funds, market makers, etc.

# Deloitte in Kyrgyzstan

As Kyrgyzstan moves towards a free market economy, it faces numerous difficulties. The Kyrgyz Republic (Kyrgyzstan) offers ample investment opportunities as a result of its natural resources, the growing consumer demand for goods and services, and its skilled workforce.

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