

Law and Reality

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The law draft of the Kyrgyz Republic «On insurance payments at the state social insurance»

Payers of insurance payments at the state social insurance (further – insurance payments) are:

- 1) The Employer:
 - a) Local organization;
 - b) Foreign organization, owning solitary division inside the territory of Kyrgyz Republic;
 - c) Individual businessman;
 - d) Private entity who is not an individual businessman.
- 2) The employee – the private entity who has entered labor relations with the employer.
- 3) The physical entity - the individual businessman.
- 4) The entity, granting insurance payments in a voluntary order according to the present Law, including a citizen of the Kyrgyz Republic, fulfilling activity beyond of its bounds.
- 5) The entity, obtaining reward and/or the fee, not related with labor relations or business activity.
- 6) The physical entity, working in the organization that has been created according to the international agreements, and in the international projects which do not have solitary division in Kyrgyz Republic.

The object of taxation by insurance payments is realization of economic activities, which results in appearance of incomes and/or expenses, concerned with labor activity of physical entities. Under the definition of “labor activity” is included the work of the physical entity on the basis of labor contract or the civil-law agreement.

Rates of the insurance payments for employers are established on the payments, accrued for the benefit of employees. The general rate of insurance payments for employers is established as 17, 25 percent.

Rates of insurance payments for employers, except for those who were specified above by numbers 4 and 5, are established in following amounts:

- 1) On disabled employees of I and II groups – 15, 25 percent;
- 2) On the employees who are not citizens of the Kyrgyz Republic, temporarily staying in the Kyrgyz Republic or living in other state, but consisting in labor relations with the employer - 3 percent;
- 3) On employees of embassies, consulates and others foreign foundations of the authorized state structure in the sphere of foreign affairs – 15, 25 percent.
- 4) The rate of insurance payments for employers - the noncommercial organizations, on disabled employees and pensioners is established as 13, 25 percent.
- 5) The rate of insurance payments for the employers who are carrying out activity on the basis of the voluntary or obligatory patent, is established as 27, 25 percent from the minimum settlement income.

Rates of insurance payments for employees are established on the payments, accrued to employees.

The general rate of insurance payments for employees is established as 10 percent, with restrictions for some categories of employees

Rates of insurance payments for employees are established in following amounts:

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1) to invalids of I and II groups, to invalids and pensioners – employees of the noncommercial organization, and also to invalids and pensioners – employees of the enterprises, foundations and organizations of the Kyrgyz society of the blind and deaf - 2 percent;

2) to employees of the enterprises, foundations and organizations of the Kyrgyz society of the blind and deaf, except invalids and pensioners - 9,5 percent.

The rate of insurance payments for the physical entity - the individual businessman on insurance payments for own social insurance is established at a rate of 10 percent from the double amount of the minimum settlement income.

The law draft of the Kyrgyz Republic «On employment»

The present law draft is brought by deputies of the Kyrgyz Republic for the employers and represents an interest in participation of employers in maintenance of the population employment, particularly by the means of creation of social workplaces for jobless citizens; development of professional training systems, organization of the intraproductive trainings; participation in financing of public services at the expense of internal funds.

According to lawyers the specified regulation of the law draft has no mechanisms of the realization, capable to induce employers to promote realization of the state problems in the field of population employment.

It is necessary to consider stimulating mechanisms which can consist in granting the tax deductions from the profit tax of the total sums, directed on professional training of active and potential employees, and at creation by the employer of social workplaces for jobless citizens-proportional profit tax reduction.

The law draft is brought by the deputies of Jogorku Kenesh of the Kyrgyz Republic, who initiated its public hearing on January, 26th 2010 and are open for your suggestions.

Draft Law of the Kyrgyz Republic «On Preparation for Submission of the Uniform Tax Declaration by Citizens of the Kyrgyz Republic».

Under Article 8.4 of the Law of the Kyrgyz Republic «On Enactment of the Tax Code of the Kyrgyz Republic» N 231 dated 17.10.2008, starting from 2011 the duty to submission a uniform tax declaration (the “UTD”) shall extend to all persons listed in Article 92 of the Tax Code of the Kyrgyz Republic dated 17.10.2008 N 230 (the «TC of the KR»). Thus, starting from 01.01.2011 the following persons will have the obligation to submit UTD:

- 1) domestic organizations;
- 2) foreign organizations, carrying out their activities in the territory of the Kyrgyz Republic with the formation of a permanent organization;
- 3) individuals that are citizens of the Kyrgyz Republic;
- 4) individuals that are residents in the Kyrgyz Republic;
- 5) individuals that are non-residents, carrying out their activities in the territory of the Kyrgyz Republic.

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public with the formation of a permanent organization;

The UTD is to be submitted within the following terms:

- 1) for organizations - until March 1 of the year following the reporting year;
- 2) for individuals - until April 1 of the year following the reporting year.

The Draft Law of the Kyrgyz Republic «On Preparation for Submission of the Uniform Tax Declaration by Citizens of the Kyrgyz Republic» (the "Draft Law") is aimed at implementing Article 92 of the TC of the KR. This declaration is voluntary and serves as a preparation for implementing the obligatory uniform declaration, provided by Article 92 of the TC of the KR. The Draft Law enables citizens who received income and acquired property before December 2009 and who did not pay the appropriate taxes and charges for this property and income, to submit UTD with the purpose to legalize them.

Essential points:

· Declarants submitting UTD are the persons listed in Article 92, i.e.:

- 1) Legal entities;
- 2) Individuals (citizens, residents, non-residents, carrying out their activity in the territory of the Kyrgyz Republic with formation of a permanent organization)

· Declaration objects:

Income received and the property acquired before December, 2009 and taxes, for which taxes, cus-

toms payments, social security contributions and other obligatory payments were not paid.

· Terms:

Declaration shall be carried out within a period of 4 months from February 1, 2010 until June 1, 2010.

· Payment:

When declaring the objects which value does not exceed the declaration threshold, the declaration payment is not charged. The declaration threshold is 45 million Kyrgyz soms. If the value of objects exceeds the amount of the threshold a declaration payment in the amount of 45 thousand Kyrgyz soms will be charged irrespective of the amount which has exceeded the declaration threshold. When declaring a sum of less than 45 million Kyrgyz soms the subject of declaration will pay a state duty for notarial acts.

The declarant himself will evaluate the object of declaration.

· Declaration procedure:

The person who wishes to declare his income and property is to apply to the state notary's office to obtain and fill out the declaration. Then, after assessment of income and property, the filled declaration is to be submitted to the state notary's office. If the amount of the income and value of the property exceeds declaration threshold is 45 million Kyrgyz soms, the receipt on declaration fee payment of 45 thousand Kyrgyz soms to the commercial bank in favour of the state is attached to the declaration.

· State guarantees:

As a result of declaration all undeclared tax and customs obligations, social security contributions and payment of other obligatory payments of declarants that arose before December 31, 2009 inclusive, as well as fines, interest and penalties under these obli-

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gations are recognized fulfilled.

It is prohibited to inspect the financial and economic activities of the declarant for the period until 31st of December. The declaration of income and property is not evidence in any kind of legal proceedings.

The Law of the Kyrgyz Republic “On Accession to the Hague Convention Abolishing the Requirement to Legalize Foreign Official Documents of October 5, 1961”

This Law was adopted by Jogorku Kenesh (Parliament) on October 2, 2009 of the Kyrgyz Republic and came into force on November 20, 2009.

With the adoption of the Law “On Accession to the Hague Convention Abolishing the Requirement of Legalization of Foreign Official Documents of October 5, 1961” (hereinafter the “Hague Convention”) the Kyrgyz Republic has abolished the requirement of diplomatic and consular legalization for foreign public documents

Article 1 of the Hague Convention provides for a list of official documents which are subject to its provisions, in particular:

- a) documents emanating from an authority or an official connected with the courts or tribunals of the State, including those emanating from a public prosecutor, a clerk of a court or a process-server (“huissier de justice”);
- b) administrative documents;
- c) notarial acts;
- d) official certificates which are placed on

documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures.

However, the present Convention shall not apply:

- a) to documents executed by diplomatic or consular agents;
- b) to administrative documents dealing directly with commercial or customs operations.

The positive impact of the Hague Convention is that it removes the need to legalize official documents which are subject to its effect. Legalization means a formal procedure (apostille) to authenticate the signature of the person who signed the document, and, where appropriate, the identity of the seal or stamp affixed on the document.

At the same time, the Hague Convention provides for a procedure for affixing the apostille by the authorized state body.

In accordance with the provisions of the Hague Convention, any State may accede to this Convention after its entry into force. Subsequently this instrument of accession is to be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Kyrgyz Republic acceded to the Hague Convention, by adopting the Law of the Kyrgyz Republic "On Accession of the Kyrgyz Republic to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of 5 October

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1961. To date, according to the State Ministry of Foreign Affairs of the Kyrgyz Republic a formal notice and the instrument of ratification of the accession of the Kyrgyz Republic to the Hague Convention has been sent to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

It should be noted that under the second paragraph of Article 12 of the Hague Convention an accession shall be valid only in relations between the acceding State and the States being already parties to the Hague Convention which shall not raise objection to such accession within six months after receiving the notice of accession.

Under the third paragraph of Article 12 of the Hague Convention, the Convention enters into force between the acceding State and the States that have raised no objection to its accession on the sixtieth day following the expiration of six months referred to in the preceding paragraph.

Given that the period specified in Article 12 has not passed, the Kyrgyz Republic is not yet a party to the Hague Convention. It will become a party in due time.

Draft Law of KR “On Mining Concession”

Pursuant to a Decree of the President of the Kyrgyz Republic “On Urgent Measures on Reforming Management of the Mining Industry of the Kyrgyz Republic” VII № 272 of 12.06.2009, a draft Law of the Kyrgyz Republic “On Mining Concession” has been prepared (hereinafter “Draft Law”).

Under the above-mentioned Draft Law the mining concession is the right that arises on the basis of an agreement entered into by the Kyrgyz Republic represented by the Government of the Kyrgyz Republic or an authorized authority on subsoil use (concessor) and a user of concession (concessionaire) for operation the subject of mining concession (Article 2).

Both legal entities and individuals including foreign ones can be concessionaires.

Article 3 of the Draft Law determines the subjects of mining concessions which include:

- right to explore and prospect mineral deposits;
- right to develop mineral deposits;
- right to process anthropogenic wastes left from mining;
- right to construct and operate underground structures not related to mining.

The amount of the concession fee is determined including taxes and customs fees, payments for environmental pollution, payment for assessment of the object of concession, etc. (Article 5).

Chapter 2 determines a procedure for granting a mining concession which includes direct negotiations (Article 8) and holding of a tender (Articles 9, 10).

Chapter 3 focuses on the agreement of mining concession, its main provisions, possibility to transfer rights under mining concession, peculiarities for granting a land plot under agreement, grounds and procedure for agreement termination. The issue on property arising during mining concession is settled

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separately (Article 15).

Chapter 4 determines the legal guarantees of the concessionaires' rights.

Chapter 5 deals with the legal norms regulating the procedure for settlement of disputes relating to concessions.

Chapter 6 also includes a stabilization clause under which amendments or cancellation of legal norms aggravating the concessionaire's position shall not be applied with regard to the concessionaire; and if so, he will be reimbursed for any losses caused by such aggravation.

It should be noted that the Draft Law is closely connected with the draft Law of the Kyrgyz Republic "On Concession" and contains a lot of references to it.

Amendments to the Law of the Kyrgyz Republic "On State Registration of Legal Entities, Branch Offices (Representative Offices)"

The Law of the Kyrgyz Republic No. 313 dated 18 December 2009 has amended the Law of the Kyrgyz Republic "On State Registration of Legal Entities, Branch Offices (Representative Offices)" (hereinafter the "Law"). The most important of these amendments are the following:

Amendments were made to Article 8 of the Law regulating the terms for state registration according to which the registration (re-registration) of political parties, their branch offices (representative of-

fices) shall be conducted within 30 calendar days from the date of submission of the list of required documents to the registration authority. Further, termination of the operation of legal entities, branch offices (representative offices) shall be registered within 7 business days.

Additional grounds for state re-registration of affiliates (representative offices) were added to Article 16 of the Law:

- change of the location of the branch offices (representative office) (from one oblast to another and from one oblast to the city of Bishkek (city of Osh) or vice versa), except branch offices (representative offices) which are subject to registration with the registration authority regardless of their location;
- amendments to provision, approval of a new wording of the provision (for affiliates (representative offices) of foreign and international organizations

The law also provides for the obligation of a legal entity, affiliate (representative office), in case of state re-registration in connection with a change of a name, to re-submit to the registration authority a certificate on the returning of the seals and/or stamps with the previous name of the company, issued by the authority of Interior Affairs before obtaining a certificate of public re-registration.

Further, in addition according to these amendments, banks and other financial credit institutions are prohibited to require documents other than the ones stipulated by the laws of the Kyrgyz Republic when opening settlement accounts for legal entities, branch

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offices and/or representative offices.

All amendments to the Law of the Kyrgyz Republic "On State Registration of Legal Entities, Branch Offices (Representative Offices)" came into effect on January 22, 2010.

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