

# Kazakhstan

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## Tax incentives for the Regional Financial Center of Almaty

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Almaty

In the nineties Kazakhstan was the first country in the Commonwealth of Independent States to privatize and restructure its financial system. During this time, we helped the country to redevelop its corporate governance, banking, investment and securities regulation infrastructure. With the success of these actions, Kazakhstan is now positioned to pursue regional financial leadership through the Regional Financial Center of Almaty (RFCA). Our lawyers have played a key role in the RFCA's creation as a regional financial hub with a first-class financial services marketplace that gives domestic investors access to foreign capital markets.

### RFCA structure

The RFCA was established in 2006 under direct control of the President of Kazakhstan as a special zone with a dedicated regulatory framework and a single multifunctional regulatory authority. The centre has an International Council to guide its strategic development, and a specialized financial court for dispute resolution. Members of the RFCA may include both domestic and foreign broker-dealer firms registered and licensed under the RFCA Authority.

These firms will only be allowed to operate on the special floor of a stock exchange located in Almaty and regulated by the RFCA Authority. Financial offerings will include government securities, equity and debt securities, credit-linked notes, and derivatives. There will be special emphasis on domestic securitized assets and on financial instruments that comply with *shariah* (Islamic law).

### RFCA taxation

In June 2006 the Kazakhstani Parliament passed a number of RFCA-related amendments to the country's Tax Code of 2001. These nominally took effect on January 1 2007, but because the RFCA has not yet begun operation their practical effective date will likely not be until 2008. Under the amended Tax Code, RFCA members will receive income tax preferences with regard to dividends and capital gains from securities purchased or sold on the RFCA trading floor.

The amendments also exempt a number of activities from income tax, including broker services, underwriting, research & analysis, and market making activities. A summary of the Tax Code changes defines the RFCA investment environment and demonstrates the investment opportunity that it presents.

### Corporate taxes

Dividends payable on debt securities purchased on the RFCA, capital gains from securities sold, and income from the provision of financial services by RFCA members are exempt from corporate income tax. Interest on debt securities purchased on the RFCA is not subject to withholding taxes. Capital losses from RFCA securities sales can be compensated at the expense of the income from capital gains received from selling other securities, either during the period when they occurred or for a carry-forward period of up to three years.

### Individual taxes

Interest payable on debt securities purchased on the RFCA and capital gains from the sale of securities admitted to the RFCA are both exempted from individual income tax. These are also not subject to individual withholding taxes. There are a variety of procedures to tax non-residents on income from Kazakhstani sources.

### Tax administration

The RFCA Authority registers RFCA participants as legal entities, and establishes tax control over them through tax reports to be confirmed by auditing organizations authorized by the Authority. The Authority also establishes procedures for the state registration and accounting registration of taxpayers as well as the documentation for registration and deregistration.

### Recent developments

The government's support of tax preferences, when combined with the RFCA's dedicated organizational structure and wide range of financial instruments, clearly demonstrates the centre's potential to become a dynamic financial hub for the Caspian region. However, since its inception the RFCA has drawn a fair amount of criticism for leading to the virtual disintegration of the existing Kazakhstan Stock Exchange (KASE), whose members can only join the RFCA's separate trading floor by establishing new subsidiary entities. This also applies to foreign broker-dealer firms, which can only trade on the RFCA through registration with and licensing by the Kazakh authorities. Another criticism is that the RFCA has not fulfilled its original promise to create an over-the-counter market as other world financial centres have.

A new law which was passed by the Kazakh Parliament in July 2007 will, pending the President's approval, address some of these issues. Kazakh broker-dealer firms operating in the KASE will be admitted to the RFCA through an accreditation procedure in which the RFCA Authority essentially recognizes the firms' previous broker-dealer licences. The new law also provides banks, pension funds and pension assets management firms with direct access to the trading floor, which should increase the volume of RFCA trades. Finally, the new law removes the initial restriction prohibiting RFCA firms from operating elsewhere, including foreign exchanges.

## Financial and corporate

### Recommended firms

#### Tier 1

White & Case

#### Tier 2

Baker & McKenzie

#### Tier 3

Bracewell & Giuliani  
Denton Wilde Sapte

#### Tier 4

LeBoeuf Lamb Greene & MacRae  
Michael Wilson & Partners  
Salans

All the attention in the Kazakhstan market this year has been on the capital markets. A recent surge in bank lending and resource exploration has led companies to seek funding on the markets, primarily the Alternative Investment Market (AIM) in London. The first initial public offerings (IPOs) in 2006 were a success, but the number of companies that are suitable for listing is beginning to thin out and the latest IPO, of Alliance Bank, raised almost a fifth less capital than expected.

But the government's recent development of the Almaty Financial Centre has brought renewed vigour to the market. Borrowing ideas from Dubai, the centre boasts tax incentives and overall government support which partners say will bring about a second phase of growth for the Kazakh capital markets.

### White & Case

White & Case is acknowledged as the leading law firm in Kazakhstan and is considered strong in all areas of financial law in the country. The firm boasts a wide-ranging international network which allows it to provide high-level advice on a number of domestic and international transactions, in particular bank lending and capital markets deals.

"White & Case is the overall leading financial law firm in Almaty," said one rival partner. He added: "They're not just a letterbox either."

Partner Yuriy Maltsev leads the firm and is joined by five associates including Michael Rayson, who was singled out as an up-and-coming lawyer.

The firm's main strength is in the equity and debt capital markets. The practice's standout role was acting for KazMunaiGas Exploration Production on its \$2.03 billion IPO on the Kazakhstan and London stock exchanges. This was the largest IPO ever in Kazakhstan, and almost double the size of the previous largest deal.

Also on the equity side, White & Case acted for Kazkommertsbank on its \$845 million offering of global depositary receipts on the London Stock Exchange, which was the first significant international equity offering by a bank from a former Soviet state.

The firm was also very active in the debt capital markets sector, advising Morgan Stanley as sole lead manager on a KT25 billion (\$200 million) Eurobond, which was the first tenge-denominated Eurobond to be issued on the international capital markets.

White & Case acted for Astana Finance on its establishment of a \$2 billion global medium term note programme and an initial draw-down of €300 million of fixed-rate notes involving a Rule 144A placement.

The firm also acted for Kazkommerts DPR Co on its \$500 million bond issue, guided lead managers Citigroup and ING Bank on ATF Capital's \$450 million notes issue and represented Credit Suisse and UBS on ALB Finance's \$150 million hybrid tier-one issue.

White & Case was also active in the structured finance market, acting for Kazakhstan's Alliance Bank on the securitization of \$200 million of diversified payment rights (DPRs). This is the first future-flow securitization DPR to be guaranteed by a multilateral development bank.

On the lending side, Yuriy Maltsev acted for a consortium of financial institutions on a \$1 billion syndicated term loan to Kazkommerts International, with Kazkommertsbank as the guarantor.

White & Case was also active on the corporate side, winning a mandate to advise the shareholders of ATF Bank in its proposed \$2.17 billion sale to UniCredit. This was notable as it was the first significant investment in Central Asia by a large European financial services group.

### Leading lawyers

Yuriy Maltsev

### Baker & McKenzie

Baker & McKenzie recorded another solid year on Kazakh elements of cross-border deals, especially on structured finance transactions. The firm is headed by Curtis Masters, who despite not being qualified to practice in Kazakhstan still advises on nearly every transaction.

"This followed on from its role guiding the Asian Development Bank in November 2006 on a \$100 million securitization by Allianz of its DPRs. Baker & McKenzie also acted for Ambak Assurance Corporation and the Financial Guaranty Insurance Company on a separate \$200 million securitization of DPRs for Kazkommertsbank in June 2006.

In one innovative transaction, the firm acted for BTA Ipoteka, ABN Amro and Bank Kazakhstan on a \$150 million residential mortgage-backed securities programme – the first ever in Kazakhstan. The firm also acted on Kazakhstan's first auto loan securitization, an aircraft securitization and a receivables securitization by a Kazakh consumer finance company.

Away from securitization, Baker & McKenzie was active in the debt markets, with a standout role advising Intergas Finance on its €600 million Eurobond offering. The firm also advised two separate international advertising companies on their purchases of controlling stakes in two local advertising companies in May 2007.

### Leading lawyers

Curtis Masters

### Bracewell & Giuliani

Bracewell & Giuliani has a focus on capital markets and banking, tending to act for the lead managers on a range of transactions. Bracewell is the only firm in Kazakhstan to have separate teams, boasting a capital markets and finance team, a corporate team and a litigation team, which makes it one of the largest firms in the country.

One of the firm's highlights was acting for Kaztransoil on its acquisition of Georgian Oil Loading Terminal Batumi in 2006. Bracewell led Turanalem Bank on its acquisition of a local Kazakh bank, and also guided Global Securities on its purchase of a uranium mining company.

The firm was very active in the capital markets, working on a number of debt and equity deals. Among its standout activities on the debt side, the firm acted for the Development Bank of Kazakhstan on a \$1 billion issue of medium-term notes, a \$450 million issue of senior notes for Termir Zholy, and a £200 million issue of notes for Bank Turan Alem.

On the equity side, the firm acted for KMG E&P on an \$800 million private placement and guided Petro Kazakhstan on its IPO on the London Stock Exchange. The firm also acted for KazInvestBan in the issue of shares and notes to Citigroup and EBRD in 2007.

### Leading lawyers

Gregory Vojack

### Denton Wilde Sapte

Denton Wilde Sapte is noted by the market as particularly strong in the energy sector, and was particularly active in financial and corporate law this year. Marla Valdez heads up the

firm, although partner Joel Benjamin is the most visible presence in the market.

Denton was very active in the equity capital markets, acting as Kazakh counsel for the underwriters on KazMunaiGas's \$2.3 billion London IPO and listing of global depository receipts (GDRs), as well as simultaneous share sales in Kazakhstan. The firm also provided Kazakh advice for Almex on its \$768 million IPO and listing of GDRs, and guided Roxi Petroleum on its \$77 million listing on the Aim.

The debt markets were also a busy area for the firm, which acted for KazakhGold and Halyk Bank on the offering of Eurobonds totalling \$200 million and \$700 million respectively.

On the corporate side, the firm acted as Kazakh counsel for Citic Resources Holding on its \$1.91 billion acquisition of Nations Energy in December 2006. Denton followed this up by advising KazMunaiGas on its \$1.07 billion purchase of a 50% stake in its parent company KazGerMunai in April 2007.

Denton was also involved in the lending market, advising a consortium of banks on the provision of a \$120 million facility for the financing of Voskhod-Chrome and on the \$1.5 billion guaranteed financing of ENRC Marketing.

#### Leading lawyers

Joel Benjamin

#### Michael Wilson & Partners

Michael Wilson & Partners is focussed on more on smaller domestic Kazakh transactions but is noted by peers as quite active in the market. The firm added partner Michael Dark to its stable this year alongside four other lawyers, making it one of the largest firms in Kazakhstan.

The firm's strength lies in project financing in the energy sector in particular. Larissa Orlova won a role advising BNP Paribas, Société Générale and Citigroup on an \$800 bridging facility for the Kashagan Project and advised European Minerals Corporation on the \$120 million equity raising and \$75 million debt financing for the Varvarinskoye gold and copper mine.

On the lending side, Michael Wilson acted for Citigroup on a \$45 million facility to phone operator KarTel, guided HSBC on a \$45 million loan to the Kazakhstan Development Bank and advised Big Sky Energy on an equity financing deal. Michael Wilson & Partners was also active in the debt markets, acting for ATF Bank on a \$200 million Eurobond issue.

The firm was also busy in the corporate sector, advising Max Petroleum on its acquisi-

tion of A&E and South Immashevskoye and subsequent Aim listing. The firm acted for ENRC on its acquisition of a strategic stake in the Emperor Gold Mine on the Australian Stock Exchange, and also guided Eurogold on its purchase of Ukraine's Saulyak and Beregovoe Gold Mines and their proposed divestment to Oxus Gold.

#### Leading lawyers

Michael Wilson

#### Salans

While Salans is noted by peers as focused more on the oil and litigation areas, the firm still managed to win mandates from a number of international banks and companies. The firm opened its Almaty office in 1994 and established a satellite office in Atyrau in 2001.

The banking and finance group is headed by Abai Shaikenov, who is singled out by peers as "a good junior partner – smart and good". The group acted as Kazakh counsel to the ENRC on a \$1.4 billion in trade financing from a consortium of banks and advised Morgan Stanley and Bear Sterns as the underwriters on the Kazakh issues on a \$1 billion bond issue by the China International Trust and Investment Company.

Salans was also active on bank lending deals, with the firm advising Credit Suisse on Kazakh legal issues relating to a \$300 million loan to a local bank. Other clients the firm has advised include ABN Amro, Citigroup and Société Générale.

Corporate work provided further activity for Salans, which advised an eastern European finance company in connection with the acquisition of a Kazakh bank and acting on more than 20 M&A transactions, in many of which the firm provided advice on due diligence, reorganizations and other related issues. The firm also provided advice on transactions in conjunction with an IPO and a bond issuance.

#### Leading lawyers

Abai Shaikenov