



Astana Financial Services Authority

Consultation Paper

AFSA-P-CE-2019-0004

ENHANCING FINANCIAL SERVICES TAX EXEMPTION FRAMEWORK

Unrestricted

August 23, 2019

Introduction

1. The Astana Financial Services Authority (AFSA) has issued this Consultation Paper to invite public comments on the proposed amendments to the Order of the AIFC Governor (AIFC Act on Financial Services Exempt from Corporate Income Tax).
2. The proposals in this Consultation Paper will be of interest to current and potential AIFC participants who are interested in exercising business activities in or from the AIFC.
3. All comments should be in writing and sent to the address or email specified below. If sending your comments by email, please use “Consultation Paper AFSA-P-CE-2019-0004” in the subject line. You may, if relevant, identify the organisation you represent when providing your comments. The AFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise. Comments supported by reasoning and evidence will be given more weight by the AFSA.
4. The deadline for providing comments on the proposals is **7 October 2019**. Once we receive your comments, we shall consider if any refinements are required to this proposal.
5. Comments to be addressed by

post: Policy and Strategy Division
Astana Financial Services Authority (AFSA)
55/17 Mangilik El, building C3.2, Kazakhstan
or emailed to: consultation@afsa.kz

Tel: +8 7172 613781
6. The remainder of this Consultation Paper contains the following:
 - (a) Background to the proposals
 - (b) Key elements of the proposed amendments
 - (c) Annex 1: Draft of proposed amendments

Background

1. The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) brings together over 129 countries and jurisdictions to collaborate on the implementation of the BEPS Package. The BEPS Package provides 15 Actions that equip governments with the domestic and international instruments needed to tackle BEPS.
2. Kazakhstan joined the Inclusive Framework on BEPS in January 2017. By joining the framework, Kazakhstan pledged to adopt and promote the implementation of the four minimum standards designed by the OECD in the BEPS project. Action 5 is one of the four BEPS minimum standards which all Inclusive Framework members have committed to implement. One part of the Action 5 minimum standard relates to preferential tax regimes.
3. From 2018 the AIFC Tax regime has been under review for compliance with Action 5 standard /BEPS by the Forum on Harmful Tax Practices (FHTP) to identify any features of the regime that may facilitate base erosion and profit shifting, and therefore have the potential to unfairly impact the tax base of other jurisdictions. In the course of AIFC Tax Regime review, the FHTP provided recommendations for removing elements raising BEPS risks.

KEY ELEMENTS OF THE PROPOSED AMENDMENTS

4. The proposal is to introduce amendments to the AIFC Act on Financial Services Exempt from Corporate Income Tax.
5. The proposed amendments to the Order of the AIFC Governor (AIFC Act on Financial Services Exempt from Corporate Income Tax) are intended to comply with Action 5 standard under the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project.
6. The proposed amendments aim to clarify that the Corporate Income Tax exemption only applies to income derived from the tax-exempt services on the conditions that:
 - the relevant core income generating activities (CIGA) are conducted in/from the AIFC;
 - the AIFC participant employs an adequate number of qualified employees and
 - the AIFC participant incurs an adequate amount of operating expenditure.

7. ***Core Income Generating Activities (CIGA)***

CIGA are the key essential and valuable activities that generate the income of the AIFC Participant. It is not necessary for the AIFC Participant to perform all of the CIGA for the particular sector, but it must perform the CIGA that generate the income it has.

In order to meet the substantial activity requirement, the CIGA that generate the income must be performed in/from the territory of the AIFC. Where the CIGA involves making relevant decisions, then the majority of those making the decisions must be present in the territory of the AIFC when the decision is made, otherwise the decision will not be considered to be made in the territory of the AIFC.

8. ***Employees***

For the purposes of the substantial activity requirements, the term “employees” is not limited to individuals that are legally employed by the AIFC Participant itself. It includes:

- employees;
- persons working for the entity being subordinated to it and deemed to be employees under the Acting Law of the AIFC; and
- owner-managers and directors.

The employee count will be based on the number of full-time equivalents (FTEs), i.e. the number of persons who worked full time within the entity in question, or on its behalf during the entire period under consideration.

If the AIFC Participant outsources, contracts or delegates some or all of its activity, then the resources of the service provider will be taken into consideration when determining whether the adequate people test is met.

The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of an FTE. For this purpose, a standard working week will be considered as 40 hours.

Directors should be counted as a fraction of an FTE commensurate with the time commitment of the role.

When considering what an adequate number of qualified employees is, this must relate to the employees needed to be able to conduct the relevant activity as a whole (not just the CIGA).

The qualifications that are considered to be adequate will depend on the relevant sector that the AIFC Participant has activity in, the CIGA undertaken in/from the territory of the AIFC and the duties performed by those employees.

9. ***Operating Expenditure***

For the purposes of the substantial activity requirements, when considering what an adequate operating expenditure proportionate to the level of activity carried on in/from the AIFC is, this must relate to the expenditure needed to be able to conduct the relevant activity as a whole (not just the CIGA). The amount that is considered to be adequate will depend on the relevant sector that the AIFC Participant has activity in, the CIGA undertaken in/from the AIFC, number of full-time employees and extent of any outsourcing.

Question:

1. *Do you have any concerns relating to the proposed amendments to the Order of the AIFC Governor (AIFC Act on Financial Services Exempt from Corporate Income Tax)? If so, what are they, and how should they be addressed?*

In this document, the underlining indicates new text and strikethrough indicates deleted text, unless otherwise indicated.

FINANCIAL SERVICES EXEMPT FROM CORPORATE INCOME TAX

In accordance with subparagraph 1-5 of paragraph 3 of article 6 of the Constitutional Statute of the Republic of Kazakhstan On the Astana International Financial Centre and paragraph 9 of article 3 of The Structure of the Bodies of the Astana International Financial Centre, adopted by the Resolution of the Management Council on May 26, 2016 No. 20-27/1814, as amended by the Resolution of the Management Council, the Amendments and Supplementations to the Structure of the Bodies of the Astana International Financial Centre, adopted on October 9, 2017 No.17-61-6.2, the Governor of the Astana International Financial Centre (AIFC Centre) ORDERS:

1. ~~In the event a A Centre Participant carries on any service~~ which conducts the relevant core income generating activities for services specified in Schedule 1, hereto in/from the territory of the Centre Participant in full compliance with the AIFC Regulations and Rules, incurring an adequate amount of operating expenditure with an adequate number of suitably qualified full-time employees, shall not be liable for corporate income tax imposed by the Tax Code of the Republic of Kazakhstan on income or capital resulting from ~~that service provided the service is carried on in full compliance with the AIFC Regulations and Rules~~ such services.
- 1) ~~The list of financial services that are exempt from corporate income tax is specified in Schedule 1 hereof.~~

A Centre Participant which conducts the relevant core income generating activities for services specified in Schedule 1 hereto by means of outsourcing of the core income generating activities outside of the Kazakhstan shall be liable for corporate income tax imposed by the Tax Code of the Republic of Kazakhstan on income or capital resulting from such services.

2. The detailed procedure of application of corporate income tax exemption for income or capital from the provision of services specified in Schedule 1 hereto is to be regulated by the AIFC Acts, which are to be developed.
3. This order comes into effect from the date of its signing.

Schedule 1

~~Schedule 1: The List of Financial Services that are Exempt from Corporate Income Tax:~~

- ~~a. A Regulated Activity listed in Schedule 1 of and Market Activities and the relevant to them core income generating activities are defined in the AIFC General Rules (GEN).~~
- ~~b. A Market Activity listed in Schedule 3 of the) and AIFC Financial Services Framework Regulations (FSFR) (excluding 16 of Schedule 1 of the GEN (Operating a Representative Office)).~~
- ~~c. A financial services activity specified in an AIFC FinTech Regulatory Sandbox Permission issued pursuant to the AIFC FinTech Regulatory Sandbox Guidance.~~