

TAXATION AND THE EDUCATIONAL ORGANIZATION IN THE REPUBLIC OF KAZAKHSTAN

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Abstract:

This article considers the features of the regime of taxation of educational organizations in Kazakhstan taking into account recent changes in tax law. It investigates the features of preferential taxation in the field of education in Kazakhstan, considers the specifics of the application of tax exemptions by various educational organizations, and suggests some recommendations concerning the optimizations of taxation of the educational organizations in Kazakhstan. In today's dynamic reality, educational organizations are key factors in developing knowledge of various fields of law, including the area of taxation. Specificity of taxation in the education system is associated with the peculiarities of the legal status of the participants of educational relations, which will be the subject of consideration in this article.

Keywords: education, legal regulation, educational organizations, autonomous educational organizations, "Nazarbayev University", "Nazarbayev Intellectual Schools", Kazakhstan, taxation, tax benefits

1. LEGAL STATUS OF EDUCATIONAL ORGANIZATIONS

The activities of the educational organizations in Kazakhstan are managed by the following legislative and regulatory acts:

- Law of the Republic of Kazakhstan dated July 27, 2007 № 319-III «On education" (with amendments and additions as of 01.13.2015);
- Law of the Republic of Kazakhstan dated January 16, 2001 № 142-II «On non-commercial organizations" (with amendments and additions as of 12.29.2014);
- Model Regulations of educational organizations and appropriate statutes developed on the base of these regulations.

According to the Law "On Education" educational organizations are "legal entities that implement one or more educational curriculum and (or) provide maintenance and education of pupils, students, regardless of ownership and organizational and legal form; individual entrepreneurs without a legal entity that implement preschool program education and training" (LRK "On Education", 2007, Art. 40).

Organization of education, depending on the level of their educational programs, can be one of the following types:

- Pre-school organizations;
- Educational institutions (primary, secondary, general secondary);
- The organization of technical and vocational education;
- The organization of post-secondary education;
- The organization of higher education;
- The organization of higher and postgraduate education;
- Specialized educational organization;
- Special educational organizations;
- The education of orphans and children left without parental care;
- Supplementary education for children;
- Supplementary education for adults.

The education system in the Republic of Kazakhstan is based on the principle of continuity. This rule was formulated in accordance with the concept of "Life Long Learning" proclaimed in "Declaration on Future Educational Policies in the Changing Social and Economic Context". The Declaration reflects a conceptual vision of OECD about the development of education. Although the Declaration was established in 1978, it still remains a relevant document for many countries, including Kazakhstan, which seeks to introduce a system of international - and especially European - standards in education (entirely consistent with the Bologna process).

In 2011 Kazakhstan applied to getting a status of observer in 4 OECD Committees including the Committee on Educational Policy. So, in our opinion the inclusion of this principle of "the OECD Declaration..." into the Law "On Education" can be considered as an action to adjust national legislation in accordance with OECD standards.

The Declaration urges the States "...to stimulate the development of more "recurrent" educational opportunities for young people and adults to continue education at all levels after periods of work" (Declaration, 1978). And although officially the state-run programs in the field of education don't refer to the recommendations of the OECD, the principle of continuity of education is included into national legislation.

In accordance with this principle the education system of the Republic of Kazakhstan includes the following levels of education (art. 12 LRK "On Education"):

- 1) pre-school education and training;
- 2) primary education;
- 3) basic secondary education (the lowest level of secondary education);
- 4) secondary education (secondary education, technical and vocational education) (the highest level of secondary education);
- 5) post-secondary education (post-secondary non-tertiary education);
- 6) higher education (the lowest level of tertiary education);
- 7) post-graduate education (the highest level of tertiary education) (Clarifications of the terms made by *Questions of the innovation economy*, 2011, pp. 3-9).

2. GENERAL LEGAL PECULIARITIES OF THE EDUCATIONAL ORGANIZATIONS' TAXATION

In Kazakhstan taxation is a matter solely of tax law (as opposed to the Russian Federation, for example, where the tax relations are regulated by both the Tax Code and the Law on Education). That is, Civil law and Tax law do not intersect at least on the issue of taxation of educational organizations. In this regard, the tax relations are regulated by:

- Code On Taxes and other obligatory payments into the budget (Tax Code) dated December 10, 2008 No. 99-IV (as amended as of 29.12.2014);
- Budget Code of the Republic of Kazakhstan on December 4, 2008 № 95-IV (as amended as of 12.29.2014).

Just like any other taxpayer, educational organizations have the rights, duties and liabilities. They are considered as taxpayers regardless their activities, but the procedure of taxation of educational organizations has its own characteristics, considering their non-profit nature and the fact that the main purpose of their activities is educational process (Syubareva 2013, P. 36-143).

In this respect, it must be remembered that improving the welfare of citizens is the main goal of state policy of Kazakhstan enunciated by President N. Nazarbayev (N.A.Nazarbayev, 2014, Strategy Kazakhstan 2050).

A special place in implementing of this goal belongs to the social sphere. Through the fiscal policy the Government stimulates the social sector including the education, but it should be noted that in the context of taxation there is no difference between public and private educational organizations. The Tax Code gives the same benefits available to all organizations operating in the social sector. These organizations have the same benefits regardless of the proprietary form and of the types of sources of funding. Special tax conditions are guaranteed only for the autonomous educational organizations which we shall consider later.

One of the most important confirmations of priority of education proclaimed by Government is the exemption of educational organizations from the most part of the taxes applicable regarding their statutory non-commercial activity. In the Tax Code this special status of educational organizations is provided by the inclusion them into the list of organizations working in the social sphere. These entities have a special procedure of the calculation and payment of tax duties and liabilities.

Paragraph 2 of Article 135 of the Tax Code contains an exhaustive list of activities carried out by organizations that may be considered as the organizations of "the social sphere". Along with other types of social services the social sphere includes the following types of educational activities:

- Provision of services of the primary, basic secondary, general secondary, technical and vocational, post-secondary, higher and postgraduate education shall be performed under the appropriate licenses to conduct educational activities, and additional education, early childhood care and education;
- The activity in the sphere of science (including scientific research, use, including realization of scientific intellectual property by its author) performing of scientific and (or) scientific and technical activities by subjects, accredited by the authorized body in the field of science.

The paragraph 2 of Article 135 of Tax Code introduces a general criterion to determine whether the organization operating in the social sphere. In order to be considered as an organization operating in the social sphere, two criteria must be respected at the same time:

1) To perform one or more of following types of educational activities:

- Provision of services of the primary, basic secondary, general secondary, technical and vocational, post-secondary, higher and postgraduate education shall be performed under the appropriate licenses to conduct educational activities, and additional education, early childhood care and education;
- The activity in the sphere of science (including scientific research, use, including realization of scientific intellectual property by its author) performing of scientific and (or) scientific and technical activities by subjects, accredited by the authorized body in the field of science.

2) Income from these activities is 90% of the total annual income of these organizations, taking into account the income in the form of gratuitously received property and remuneration for deposits.

This leads to the conclusion that if the organization runs one or more activities listed above and have the income from other activities in excess of 10% of total revenue, this organization cannot be recognized as organization operating in the social sphere.

3. THE TAX LIABILITIES OF THE EDUCATIONAL ORGANIZATIONS

Corporate income tax. The Article 135 of the Tax Code provides that the income of organizations operating in the social sphere is not liable to tax if they carry out activities consistent with their main goal. Otherwise (if their activities in the social sphere brings less than 90% of total income) they lose the status of organizations operating in the social sphere. In this case they are considered as usual commercial entities and their overall income automatically becomes taxable by corporate income tax on standard terms.

Value-added tax. In accordance to Art. 253 of the Tax Code of the RK services, activities in the sphere of culture, science and education shall be exempted from the value-added tax, if they are related to services, works:

- In the sphere of early childhood care and education; primary, basic secondary, secondary, additional education; technical and professional, post-secondary, higher and postgraduate professional education, performed on the appropriate licenses for the right to perform theses of activity;
- Scientific research works carried out on the basis of agreements on government order;
- On library service.

We should notice that tax incentives on VAT are available for specific activities, regardless of the type of organization and regardless of other conditions, as opposed to income tax. For example, if the activity of the company consists of educational and trading activities (correspondingly 50% and 50%) only 50% will be exempted from VAT. For what concerns corporate income tax such organization will not have any tax incentives, because the share of educational activity is less than 90%, and it does not receive the status of "organizations operating in the social sphere".

Property tax. Educational organizations shall assess property tax at a rate of 0,1% of the tax base. Other legal entities shall calculate property tax at a rate of 1.5 percent of the tax base instead.

Other taxes - *social tax, tax transport vehicles and land tax* are paid by the educational organizations pay on general grounds.

3.1. The features of tax liability with respect to income from donations

We'll take a look at the tax liabilities with respect to donations received by the educational organizations.

The inpayments and donations to the entities (grants, entrance and membership fees, contributions of participants of a condominium, sponsorship and charity, gratuitously received property) are not taxable only with respect of the non-profit organizations. (P. 2 Art. 134 of Tax Code of RK).

The Civil Code provides the existence of non-profit organizations, and educational organizations can be non-profit organizations. However, the problem is that the Tax Code for tax purposes gives its own definition of non-profit organizations, so not each non-profit organization recognized in this status by the Civil Code, will be recognized as a non-profit organization for tax purposes.

Unlike the Civil Code, the Tax Code establishes additional criteria for the definition of non-profit organizations:

- 1) Not all non-profit organizations defined in civil law can be considered as non-profit organizations for the purposes of taxation;
- 2) Organizations operating in the public interest only can be considered as non-profit organizations;
- 3) The organization should not be aimed at receiving income generally (while civil law only requires that the organizations should not be aimed at receiving income as the main goal);

4) Non-profit organizations should not allocate the property and net income between the parties (but not just "net income" as the civil legislation declares). (The legal status of non-profit organizations in Republic of Kazakhstan, 2011, p.63)

If the educational organization does not correspond with these conditions, it can apply only to organizations operating in the social sphere (also corresponding with the appropriate conditions).

These educational organizations should include income from charitable activities in the total annual income in the generally established order. However, they have other benefits as described above. As an organization operating in the social sphere, educational organization is exempted from income tax (Art. 135-1 of the Tax Code of the RK). At the same time, they can't accept as much donations as they would like. As previously mentioned, the income received from carrying out the educational activity should be at least 90 percent of the total annual income. Incomes from other activities, including the income in the form of gratuitously received property and remuneration for deposits are included to the remaining 10% of the total income. It means that the educational organization can't accept donations in unlimited value, otherwise it will lose special status and appropriate tax incentives.

4. THE LEGAL STATUS OF AUTONOMOUS EDUCATIONAL ORGANIZATIONS

One of the peculiarities of the legal regime of taxation in Kazakhstan is the presence of special educational organizations, which are regulated by a special law (the Law of the RK "On the status of "Nazarbayev University", "Nazarbayev Intellectual Schools" and "Nazarbayev Fund", January 19, 2011, № 394-IV LRK). The law defines the legal status and a special legal regime of creation and activity of one specific university of Kazakhstan ("Nazarbayev University"), a network of secondary schools ("Nazarbayev Intellectual Schools") and Educational Fund ("Nazarbayev Fund"), established by the Government upon an initiative of the President and named after him.

The Law On Education, the other acts of the Republic of Kazakhstan regulating the educational, scientific and (or) scientific and technical activities, are applicable to the University, Intellectual schools and the Fund only in the part which is not regulated by the aforementioned Law (Article 2 of LRK №394-IV).

However, as in other legal cases Kazakhstan ensures the primacy of international law over the national law, so in the case of legal contradictions the provisions of ratified international treaties prevail.

These specific educational organizations are defined in the law as "Autonomous educational organizations" - AEOs. Autonomous educational organizations are defined by law as a non-profit organizations having no membership, established by the Government of the Republic of Kazakhstan (Article 1 LRK №394-IV).

They are an experimental platform, carrying out the developing, monitoring, research, analysis, testing, introduction and implementation of innovative programs in education (at all levels, defined by the Law of RK On Education) and science (Article 4 LRK №394-IV).

The problem is that Kazakhstan has no special law determining the nature and regulating the activities of autonomous educational organizations. Abovementioned law establishes a special legal status only in respect of "Nazarbayev University", "Nazarbayev Intellectual Schools" and "Nazarbayev Fund". These educational organizations are the only AEOs in Kazakhstan for now. On the one hand, theoretically, the list of the autonomous educational organizations can include the other educational organizations. On the other hand, based on the definition of autonomous educational organizations given in Tax Code, we can assume that it is impossible to obtain this status. AEOs should be directly established by the Government of the Republic of Kazakhstan, they also should have the Supreme Board of Trustees as a supreme governing body.

The creation of autonomous educational organizations is caused by the government's desire to create the educational organizations in which can be tested the new educational technologies and management techniques. They have a lot of benefits - it's not only tax incentives regime, but also the gratuitous transfer of property from State, special privileges in the field of education initiatives. In their experimental purposes, the abovementioned autonomous educational organizations have virtually unlimited "carte blanche", which is reflected in a special legal regime of activity. For example, AEOs, their

organizations, and the foreign legal entities, implementing educational programs in the AEOs do not need a license for educational activities.

In relation to the AEOs it is not a mandatory to be certified against the State certification procedure provided by the legislation of the Republic of Kazakhstan on Education (Art. 8 LRK №394-IV). Nazarbayev University implements its own special educational programs and the educational programs of foreign partners, issues the special diplomas, the students of this University are exempted from compulsory State Transitional Control of knowledge (Art. 9 LRK 394-IV). In addition, the AEOs attract foreign specialists for positions of managers and teachers/lecturers without obtaining permits for foreign labor.

Special legal regime is provided for processes of taxation of autonomous educational organizations. The list of tax liabilities AEOs and the procedure of their implementation is also managed by the Tax Code of the Republic of Kazakhstan, which was amended for this purpose (LRK №467-IV, LRK №200-IV, LRK № 61-V and LRK №257-V).

In particular, the taxation of autonomous educational organizations is managed by the special paragraphs of the Tax Code of RK.

Although in the beginning of paper we noted that the tax and civil legal relations of the educational organizations in Kazakhstan do not intersect, however, for tax purposes the Tax Code also provides the definition of the autonomous educational organizations, moreover, it describes the essence of AEOs in the details. The Tax Code defines five different sets of conditions that enable the organization to be called AEO. Advantageously AEOs must comply with the following requirements (in different combinations):

- A non-commercial organization created at the initiative of the First President of the Republic of Kazakhstan - the Leader of the Nation to provide funding for autonomous educational organizations, the highest governing body of which is the Supreme Guardianship Board;
- A non-commercial organization created by the Government of the Republic of Kazakhstan;
- Its highest governing body is the Supreme Guardianship Board, created in accordance with the legislation of the Republic of Kazakhstan;
- It performs one or more of educational activities, specified by the Laws of the Republic of Kazakhstan.

Although AEOs differ in terms of gaining the status of "an autonomous educational organization", all of them have the same benefits.

5. THE TAX LIABILITIES OF THE AUTONOMOUS EDUCATIONAL ORGANIZATIONS

Let's consider the tax regime of AOE. It should be noted that in many positions taxation autonomous educational organizations is identical to the taxation of non-profit organizations working in the social sphere.

Corporate income tax. The amount of the corporate income tax is payable to the budget by an autonomous educational organization shall decrease by 100 percent in accordance with Article 139 of the Tax Code. (Art. 135-2 of the Tax Code of the RK). Also the interest on deposits which is paid to autonomous organizations of education shall not be taxable at the source of payment (P. 2 Art. 143 of the Tax Code of the RK). It should be noticed that also all types of donations to AEOs are included to the total annual income, and as a part of income AEOs are completely exempted from income tax in accordance with above-mentioned Article of Tax Code.

Value-added tax. Educational services, provided by an autonomous educational organizations shall be exempted from the value-added tax (Art. 253-1 of the Tax Code of the RK).

Property tax. Autonomous educational organizations shall assess property tax at a rate of 0,1% of the tax base. Other legal entities shall assess property tax at a rate of 1,5% of the tax base.

Other taxes - *social tax, tax transport vehicles and land tax* are paid by the educational organizations on general grounds.

From the point of view of the state guarantees of the priority of education the tax incentives are important and necessary: the state providing tax incentives, supports education and educational organizations for creating more favorable conditions compared to other taxpayers. However, the significant support of AEOs causes the questions. This significant support, in our opinion, undermines the foundations of a competitive education market and leads to discrimination of other educational institutions. As a result of additional tax support from the State, AEOs have additional resources for their development.

For example, in relation to *individual income tax* AEOs have advantages while compared to other educational organizations. Autonomous educational organizations don't withhold the personal income tax from an employee in the case the employee receives indirect income in the form of paid internships in another AEO.

These expenses include the expenses for education, advanced training or retraining of the employee, expenses of the employee for accommodation within the standards, established by the Government of the Republic of Kazakhstan; the expenses for the journey to a place of education, in case of the enrollment, and back, after completion of the education, advance training or retraining of the employee; the amount of money paid to employee for each day of training, within the limits established by legislation for training in Kazakhstan and abroad (p. 42 Art. 156 of the Tax Code of the RK).

In practice, this advantage means additional opportunities for academic staff of AEOs comparing other educational organizations. In our opinion in practice this advantage means more inclusive opportunities for development of academic staff between autonomous educational organizations comparing with other educational organizations of Kazakhstan, more favorable conditions for strengthening of their science and educational potential.

In addition, there is exempted from taxation the material gain actually incurred by the autonomous education institution, specified in paragraph 1 of Article 135-1 of Tax Code RK in respect of a resident foreign legal entity, in the form of the following expenses: accommodation fees; medical insurance; air travel fees from the place of residence outside the Republic of Kazakhstan to the place of work in the Republic of Kazakhstan and back. The same conditions are applicable for nonresident individual in cases when a foreigner: 1) is an employee of this AEO; 2) performs services to the AEO; 3) is an employee of nonresident legal entity, which performs services to the AEO (p. 41 Art. 156 and p.13 Art. 200-1 of Tax Code of RK).

Practical examples of the benefits of AEOs from these rules.

Last years Kazakhstan actively develops the international cooperation of universities, in particular, attracts the foreign professors to give lectures for Kazakhstani students within the framework of special budget program. This program requires an invitation of well-known professors having good science and academic reputation, with the scientific achievements in specific areas. Except the honorarium within the framework of this budget program Universities may incur the expenses on accommodation fees; medical insurance; visa fees, air travel fees from the place of residence outside the Republic of Kazakhstan to the place of work in the Republic of Kazakhstan and back. However, in the case of the ordinary universities, these costs are treated as indirect revenues of guests who are subject to income tax at the rate of 20%. The necessity of payment this tax on "virtual" indirect income causes many moments of misunderstanding between the hosting university and the guest (Explanatory letter of the Tax Committee, 2011, NK-13-21/4503).

The situation looks more complicated when the professor arrives to Kazakhstan without obtaining the honorarium (for example, as volunteers or as part of scientific mobility program), with only the reimbursement of travel expenses and accommodation costs. In this case, the guest is deprived of a source of real income, but have to pay tax on indirect revenue.

The Tax Code allows an autonomous educational organizations avoid these problems, but the rest educational organizations stay inside strict framework. In these conditions they are forced to seek the alternative methods of reimbursement of guests' costs balancing between their own interests and the interests of the partners on one hand and the fiscal interests of the State on other hand.

Some issues of AEOs taxation are managed by special sections devoted to the taxation of nonresident legal entities. In particular, income of nonresident legal entities that do not have a permanent establishment in Kazakhstan, is not subject of withholding tax, if it was earned as a result of works and provision of services to the autonomous educational organizations (P.5 Art. 193 of the Tax Code of the RK). The same article exempts income from royalties (payment for the use of copyright, "know-how", etc.) received from the AEOs.

If a legal entity has a permanent establishment in the Republic of Kazakhstan, it is entitled to have the same benefit. In particular, a non-resident legal entity, operating in the Republic of Kazakhstan through a permanent establishment, shall reduce the amount of the corporate income tax, calculated in accordance with Articles 139 and 199 of this Code, by 100 percent when determining the amount of the corporate income tax, payable to the budget in case, if the income from execution of works, provision of services to the autonomous education institutions makes no less than 90 percent of the received income in the total annual income of this non-resident legal entity. (P.1 Art.198 of Tax Code of RK) (Explanatory letter of the Tax Committee of the Republic of Kazakhstan, 2009, № 468).

Unequal incentives are created for entities that can contribute to the development of educational organizations through the charity. For example, according to Article 133 of the Tax Code, taxpayers, transferring the property to the organizations, working in the social sphere on a gratuitous basis, shall have the right to reduce the taxable income in the total amount which does not exceed 3% of taxable income (p.1). At the same time this article (p. 4) does not limit the size of the donations to the autonomous educational organizations - the taxpayers have the right to reduce their taxable income in the full amount of subsidies which were transferred to the autonomous education organizations. Thus, the autonomous educational organizations look much more attractive for donations than the other educational organizations.

Despite the action of a specific legal regime concerning AEOs, in particular, the quite extensive list of tax incentives for them, currently the new legislative changes in relation to the AEOs are planned. Thus, in the Majilis of Parliament was presented the draft of Law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning on regulation of activities of autonomous educational organizations". Ministry of Education and Science plans to exempt the AEOs from the payment of some taxes (Kumyspaeva N., 2014).

The future law has two main objectives. Firstly, the improvement of academic management of autonomous educational organizations and ensuring the quality of their work. Secondly, the organization of activities to create innovative cluster of Nazarbayev University.

According to the Government, these future amendments of Tax Code will allow to resolve issues related to the possibility of autonomous educational organizations to simplify the administration of their tax incentives. Thus, it is proposed to make clarity in the process of value-added taxation of autonomous educational organizations, financed by the special-purpose receipts. According to the Budget Code of the Republic of Kazakhstan, "special-purpose receipts are gratuitous and irrevocable payments from the budget for the activities of autonomous educational organizations and (or) non-profit organization established in the legal form of the fund solely for the financing of autonomous educational organizations".

It is proposed the amendments to the calculation of the individual income tax of students. At present time the autonomous educational organizations use their own financial funds to provide the participation of some talented students in the educational and scientific activities, such as international competitions, seminars. In this case students have indirect revenues in the amount of incurred expenses and must pay income tax. In this connection, it is proposed to provide an exemption from PIT such incomes of students, in order to encourage their participation in the international competitions and seminars.

It is supposed the clarification of the tax incentives on individual income tax for workers of autonomous educational organizations when AEOs send them for training, as well as the regulation of issues related to the possibility of ambiguous interpretation of provisions of the Tax Code.

In conclusion it must be said that the improvement of taxation of educational organizations must come from balancing the interests of both organizations - educational institutions and the social orientation of the fiscal interests of the State.

Currently we think it is not impractical to bring up an issue of full exemption educational organizations from taxes because most of them are actively engaged in entrepreneurial activity and they participate in business relations making a profit. However, it is necessary to talk about tax optimization of educational organizations. In our opinion, due to the dynamic development of innovative activity of educational organizations should expand the list of organizations, which may be granted the significant tax benefits under certain conditions. Thus, significant tax benefits can be provided to organizations - participants of the project to implement the research, development and commercialization. For example, it is possible to exempt such organizations from the duties of taxpayers for 10 years. But the most important thing is not disturb the business struggle of the education market.

We believe that the preferential tax regime provided for AEOs can be extended to other educational organizations with high rates of the statutory activity. This is confirmed by representatives of the Government of the Republic of Kazakhstan. They reported that the autonomous educational organizations - Nazarbayev University and Nazarbayev Intellectual Schools - are a pilot project. The experience gained during the implementation of these projects will be used in subsequent stages of the education system's development.

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