

Astana International Financial Center: Features of the Tax Regime and Legal Regulation of Cryptocurrency Turnover

Abstract: In its desire to encourage some individuals the State should not infringe the rights and legitimate interests of others. The investment policy of the State should not be discriminatory and should always, first of all, take into account the national (public) interests. However, the State is not always consistent, reasonable and fair in its investment policy in relation to the entire society. The state through public authorities and public officials is the spokesman of the public interests. In this case, the State must take these public interests into account when carrying out activities, in particular, when establishing preferential tax regimes, when attracting foreign investment by establishing a special investment tax residence for foreigners, when limiting the turnover of certain objects of legal relationship. In addition, the private interests of a certain circle of persons should not replace the public interests. The policy pursued by any State (tax, legal, social, economic) should be aimed at improving the standard of living of the entire society within a State. But not at the expense of the established constitutional and sectoral principles and values, as well as the rules of the international cooperation established in international agreements. The article discusses the problems of establishing a special preferential tax regimes on a territorial basis within a unitary State and the problems of legal regulation of cryptocurrency turnover in the territory of the Republic of Kazakhstan.

Keywords: international financial center, tax regime, cryptocurrency.

Introduction

In recent years our attention has been increasingly attracted by contradictory legal acts adopted by legislative or authorized public authorities in certain areas. Sometimes in pursuit of current trends, the successes of foreign states and international organizations, we blindly copy their path, forgetting to compare it with the direction of development chosen by our state.

The AIFC (Astana International Financial Center) of the Republic of Kazakhstan was established following the example of other financial centers existing around the world such as the International Financial Center in Dubai, which united several hundred large companies operating in the field of finance (banking, insurance, financial companies, asset management companies, etc.). IFC in Dubai members have a wide arrange of privileges, in particular, exemption from the payment of income tax. How-

ever, no matter how the experience of Dubai is attractive, we depend on our mentality, culture, values, principles and legislation (in the most positive sense). We should carefully analyze the pros and cons before adopting the experience of other states.

The most important factors in the formation of the International Financial Center include:

1. stable financial system and stable currency with a stable exchange rate;
2. political and social stability in the state;
3. liberal attitude towards the business and economic freedom;
4. human capital with professional skills and etc. [Aslanyan 2019].

In other words, before forming an International Financial Center on the territory of the state, this state must already have the above resources and factors at a significantly high level of their development. Why a special zone with the special legal and tax regime, with different legislation, with a different judicial system, with the privileges in relation to foreign labour was created in the Republic of Kazakhstan? Because the national and foreign investors do not trust the national judicial system, because the level of education doesn't allow offer highly qualified specialists to domestic and international market, because the national currency isn't stable and doesn't inspire confidence when making large international transactions.

At the same time, we are convinced, that there is no need for the formation of special zones within the state, if the state and society are developing steadily and confidently in the right direction. First of all it is necessary to create and apply effective mechanisms within the state for all its citizens and organizations, reduce the overall tax burden, stabilize the national currency, create an educational foundation for national competitive specialists. If the state creates a favourable climate for national business and national investors, without regard to foreign capital and investments, develops steadily, stabilizes the political and social spheres, forms a truly fair and independent judicial system, then such a state itself becomes attractive to foreign investors and there is no need to create special privileged zones and territories.

Taking into account the fact that the AIFC in the Republic of Kazakhstan was created in the absence of an appropriate economic, political, judicial and social foundation, it can hardly be said that the functioning of the AIFC has born fruit for the entire Kazakh society. During the period of functioning of the AIFC the number of new workplaces for the national personnel did not increase, the level of education in state educational institutions did not increase, did not create new manufactures thanks to which the Republic of Kazakhstan could become not only a state rich in minerals, but also a state capable of exporting finished products. There were no positive changes in monetary system (national currency is still not stable, loan rates and conditions and indebtedness of the society have not been reduced). Small businesses are still suffocating. The judicial system leave something to be desired. All of this al-

lows to say that it is necessary to change the intrastate approach to entire society and economy as a whole, and not to individual territories and zones.

It must be noted, that in history of Kazakhstan there have already been unsuccessful attempts to create such centers and institutions serving them: Regional Financial Center of Almaty (RFCA) and Specialized Financial Court of Almaty (SFCA).

On June 5, 2006 the Law of the Republic of Kazakhstan “On the Regional Financial Center of Almaty” was adopted (the Law of the Republic of Kazakhstan “On regional financial center of Almaty”, the act was repealed). RFCA was created for the purpose of developing the securities market and attracting foreign investments into the economy of the Kazakhstan using securities. The goals and objectives were similar to the current AIFC. SFCA was created for the purpose of resolving disputes if at least one party of this dispute was an RFCA participant. A strong feeling of *déjà vu* should arise here: seems that history to be repeating itself, but we did not learned the lessons.

9 years after the creation of the RFCA the President of the Republic of Kazakhstan claimed that the process of creating the RFCA was delayed. He also gave instructions to give a special status to this territory by analogy with Dubai and other states. In other words, 9 years after the adoption the Law of the Republic of Kazakhstan “On the Regional Financial Center of Almaty” the necessary infrastructure was not even created. And even later it was never formed, as evidenced by the termination of the RFCA project by the adoption in 2005 of the Constitutional Law of the AIFC and by the termination of the Law of the Republic of Kazakhstan “On the Regional Financial Center of Almaty”. We simply suddenly decided the RFCA project did not bring the desired results, allegedly, due to the mistake with the chosen region, and not because of the lack of a foundation for its realization and problems with diligence on the part of the public authorities.

In particular, it is noted, that the RFCA project failed for a number of reasons: irresponsibility of executors for the realization of the project, lack of confidence in the national currency, etc. [Temirkhanov 2015]. Since then, nothing has changed in the policy pursued by the state, but we decided to create the AIFC in another region.

As for the AIFC in the Republic of Kazakhstan, literally every rule of law, contained in the Constitutional Law of the AIFC or in the AIFC acts, encourages a legal analysis for its compliance with the Constitution of the Republic of Kazakhstan, the current legislation of the Republic of Kazakhstan and its basic, including constitutional, principles and values. Two important exceptions that are in force on the territory of the AIFC for its participants, are discussed in current article: a special tax regime and features of the legal regulation of cryptocurrency turnover.

Tax Regime on the Territory of the AIFC

A special tax regime has been established for the AIFC authorities, their organizations and the AIFC participants [Article 6 of the Constitutional Law of the AIFC]. Literally the rule of law states that the tax regime in AIFC “is determined in the Tax Code of the Republic of Kazakhstan, unless otherwise provided by this article”. But we should understand the following: any exemptions from the tax regime, that is defined and established by the Tax Code of the Republic of Kazakhstan, is the creation of an independent new preferential tax regime in the Constitutional Law of the AIFC.

Constitutional Law on the AIFC defines a non-exhaustive list of types of activities exempted from payment of certain taxes. A complete list of financial services, provided by the AIFC participants and exempted from corporate income tax (CIT), individual income tax (IIT) and value added tax (VAT), approved by the Joint Order of the AIFC Governor dated May 5, 2020 No.126, the Minister of Finance of the Republic of Kazakhstan dated May 29 No.547, 2020 and the Minister of the National Economy of the Republic of Kazakhstan dated June 12, 2020 No. 118.

In particular, since the enactment of Constitutional Law of the AIFC until January 1, 2066 (for 50 years) the following are exempted from paying:

1. CIT – the AIFC authorities and their organizations under conditions established by the AIFC acts;
2. CIT – the AIFC participants (on income received from the provision of financial services on the territory of the AIFC, the list of which is established by the Constitutional Law of the AIFC);
3. IIT – the foreign workers of the AIFC participant or AIFC authority;
4. IIT and CIT – individuals and legal entities on income, the types of which also directly are established in the Constitutional Law of the AIFC;
5. Property tax and land tax – the AIFC participants and AIFC authorities (on objects located on the territory of the AIFC);
6. VAT – the AIFC participants (on services established in the Constitutional Law of the AIFC).

In other words, the Constitutional Law of the AIFC and Joint Acts of the AIFC authorities and public authorities of the Republic of Kazakhstan determine the types of taxable activities of a certain category of entities exempted from paying the CIT, IIT, VAD, property tax and land tax.

It proceeds from the foregoing that on the territory of the AIFC is little left of the tax regime, established by the Tax Code of the Republic of Kazakhstan, and such exceptions can hardly to be named *some* exemptions. The establishment in the Constitutional Law of the AIFC of the features of legal regulation of tax legal relationships

may contradict the basic principles of tax law determined in the Tax Code of the Republic of Kazakhstan.

The establishment and termination of state taxes and fees, as well as exemption from their payment belongs to the exclusive competence of the Parliament of the Republic of Kazakhstan [Subparagraph 2) of paragraph 1 of article 54 of the Constitution of the Republic of Kazakhstan], and this authority can not be assigned by another public authorities or persons.

In addition, the rules of law governing tax legal relations can be established exclusively in the tax legislation of the Republic of Kazakhstan. The inclusion of rules of law governing tax legal relations included into the non-tax legislation of the Republic of Kazakhstan should be directly provided by the Tax Code of the Republic of Kazakhstan [Paragraph 4 of article 2 of the Tax Code of the Republic of Kazakhstan].

“A distinctive feature of the Tax Code as the central integral part of the tax legislation of the Republic of Kazakhstan is that only in Tax Code the taxes and fees can be established, enacted, changed and canceled” [Commentary on the Tax Code of the Republic of Kazakhstan, p. 44]

The current tax legislation of the Republic of Kazakhstan consist of the Constitution of the Republic of Kazakhstan, the Tax Code of the Republic of Kazakhstan and other normative legal acts the adoption of which is provided by the Tax Code of the Republic of Kazakhstan [Paragraph 1 of article 2 of the Tax Code of the Republic of Kazakhstan].

The Constitutional Law of the AIFC is neither the Constitution of the Republic of Kazakhstan, nor the Tax Code of the Republic of Kazakhstan. In the Tax Code of the Republic of Kazakhstan, there are no any rules of law indicating the need to adopt a special act on the AIFC and a special tax regime for its participants.

This means that the Constitutional Law of the AIFC is not a part of a current tax legislation of the Republic of Kazakhstan and can not include the rules of tax law governing tax relations including tax exemptions.

The taxation principle of certainty clearly establishes that the grounds and procedures for the emergence of a tax obligation, as well as all significant provisions of its fulfillment (place, time, method of tax calculating and tax payment) must be determined in *tax legislation*. If the Constitutional Law of the AIFC is not a part of a current tax legislation, then the rules of law that change the significant provisions for the fulfillment of the tax obligations are included into the Constitutional Law of the AIFC unlawfully.

The establishment on the territory of the AIFC of a special tax regime for the AIFC participants also contradicts another basic constitutional and tax law principles.

The Constitution of the Republic of Kazakhstan establishes that Republic of Kazakhstan is a unitary state, and this means that the tax legislation of the Republic of Kazakhstan applies throughout the territory of the Republic of Kazakhstan.

According to the Tax Code of the Republic of Kazakhstan, the tax system in the Republic of Kazakhstan is unified throughout the territory of the Republic of Kazakhstan in relation to all of the taxpayers [Article 9 of the Tax Code of the Republic of Kazakhstan].

Therefore, based on constitutional and tax law principles the creation of special preferential tax regimes in any specific territory is not allowed in the Republic of Kazakhstan (geographic zone, region, city or district) except for the special economic and industrial zones and the park of the innovative technologies provided for in the Tax Code of the Republic of Kazakhstan (the Law of the Republic of Kazakhstan dated April 3, 2019 No. 242-VI “On special economic and industrial zones”; The Law of the Republic of Kazakhstan dated June 10, 2014 No. 207-V “On innovation cluster Park of the innovative technologies”; chapter 79 of the Tax Code of the Republic of Kazakhstan).

However, from January 1, 2021 the amendments to the Tax Code of the Republic of Kazakhstan were enacted by the Law of the Republic of Kazakhstan dated December 10, 2020. According to these amendments, AIFC participants (foreign persons, stateless persons) can obtain a special “investment tax residence of the AIFC” under the provision of a mandatory payment to the Republic of Kazakhstan budget for issuing a document which confirms the investment residence of the AIFC (The Constitutional Law of the Republic of Kazakhstan dated December 30, 2019 No. 296-VI “On amendments and additions to some constitutional laws of the Republic of Kazakhstan”; The Law of the Republic of Kazakhstan dated December 10, 2020 No. 382-VI “On amendments and additions to the Tax Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan “On the enactment of the Tax Code of the Republic of Kazakhstan”). At the same time the period of stay of an individual – an investment resident of the AIFC for recognition as a tax resident of the Republic of Kazakhstan in order to obtain tax benefits in the AIFC has been reduced by 2 times compared to the period of stay in the territory of the Republic of Kazakhstan for all other foreign individuals in order to be recognized as tax residents of the Republic of Kazakhstan (from 183 up to 90 years per year) [Paragraph 2 and 2-1 of article 217 of the Tax Code of the Republic of Kazakhstan]. For a “symbolic” payment to the budget of the Republic of Kazakhstan – 7 000 monthly calculation index (which is 20 419 000 tenge for 2021) an investment resident of the AIFC will be exempted from paying IIT on income received from sources outside the Republic of Kazakhstan. Is this not the creation of an offshore with the efforts of the state and at the same time a pay off to the state for the release of an income, received from another countries, from paying taxes to its budget? This approach means not only the creation by the state of a special preferential tax regime based on a regional sign, but also the formation specific city-state within Republic of Kazakhstan. In addition, we are trying to attract foreign investors to the Republic of Kazakhstan at the expense of other states and encourage their unwillingness to pay taxes for legal pay off. However, the Repub-

lic of Kazakhstan itself hardly approves when another states with similar benefits lure away its taxpayers using this method.

M.K. Suleymenov and A.E. Duysenova in one of their work critically note that the legal system of the AIFC "...contradicts all the traditions and customs of this state (*the Republic of Kazakhstan – author*). (...) The Constitutional Law of the AIFC was adopted in violation of the Constitution of the Republic of Kazakhstan, in which the law of the Republic of Kazakhstan enshrined as a current law and in which strictly limited cases when constitutional laws can be adopted are enshrined (President, Government, Parliament, Constitutional Council, judicial system). The creation of a financial center does not fall under these cases" [Suleymenov, Duysenova 2020, pp. 42–49].

Since in accordance with the Constitution of the Republic of Kazakhstan everyone is equal before the law [Paragraph 1 of article 14 of the Constitution of the Republic of Kazakhstan] and in accordance with the principle of fairness of taxation taxation is universal [Paragraph 1 of article 7 of the Tax Code of the Republic of Kazakhstan], the introduction of tax benefits for financial sector entities should refer to such entities on the entire territory of the Republic of Kazakhstan. For example, how banks, dealers, brokers, portfolio managers throughout the territory of the Republic of Kazakhstan and their workers differ from exactly the same entities in the AIFC? Why they are deprived of all the privileges, geographically provided only to the AIFC participants?

Among other things, through the creation of the AIFC the state, presenting its good intentions in the form of the development of the financial industry, created a legal offshore zone, where part of the unified and equal tax system of the Republic of Kazakhstan does not work.

The creation of such offshore zones within the state is controversial. On the one hand, it can be understood when the state creates the investment attractive zones in remote and poorly developed region of the state (which we have a lot) for the development of this region, its production forces and for the purpose of money infusion into infrastructure of this region providing investment tax preferences to investors. At the same time, such public or private investment should be implemented not only in the financial sector, but also in a real (production) field of the economy, which will increase the economic and political independence of the state, as well as its attractiveness in the international market.

But in the case of the AIFC the zone was created in the capital of the state which can hardly be called "a poorly developed region". Moreover, the AIFC is financed from the state budget for the money of all taxpayers of the Republic of Kazakhstan, even those who have nothing to do with the AIFC and to whom the state, under normal conditions, will not provide such benefits.

So why this special territory, which has been granted a separate and independent status, in that case, does not serve and support itself at the expense of its own income?

The answer is quite simple: the AIFC does not have its own taxpayers who bring it income. There are only beneficiaries. For some reasons we have created a separate and independent investment territory, which undoubtedly requires administration, but has no income even for its own maintenance.

On the other hand, in economic terms, the creation of “tax havens” or “offshore zones” has a negative influence on the development of the state’s economy as a whole. Any introduction of such offshore zones may eventually lead to the creation of inequality between initially equal. If the state establishes the constitutional principle of equality of all its individuals and legal entities before the law¹, then this state must strictly follow this principle and not create by its own acts zones and territories where this principle may be broken.

States around the world, not excluding the Republic of Kazakhstan, with enormous zeal seek to restrict a capital flight to offshore zones and strictly condemn the business for this. For example, heads of states and governments of the G20 approved the Action Plan on Base Erosion and Profit Shifting [www.dx.doi.org/10.1787/9789264202719-en, access as of 19 September 2021] and this plan is currently being implemented. Anti-offshore legislation is adopted everywhere. And at the same time the Republic of Kazakhstan by its own acts on its territory legalizes one of these zones. Economic researches note that the creation of offshore zones reduces the effectiveness of government economic management and states seek to develop effective anti-tax haven legislation [Katasonov 2014, p. 412].

Nowadays there is a situation in Kazakhstan which is similar to the one that was in the country 25–30 years ago with the attraction of foreign investments by providing with enormous tax benefits only foreign investors. Foreign investors were almost completely exempt from taxation, carried out an investment activity in our territory, and subsequently we imported finished products from our raw materials at exorbitant prices. An all because neither then nor now there is an industrial infrastructure and its own internal market for the production of goods in Kazakhstan. Today the situation is the same: with the inflow of foreign capital to the AIFC, with its full exemption from the taxation, the state does not receive either funding for important industries or taxes from highly profitable financial activities carried out by foreign investors.

There are a lot of illustrative examples of the state’s adherence to a “double standards” policy. For example, money transaction are subject to financial monitoring carried out by banks if the amount exceeds 3 (5, 7, 10) million tenge (Article 4 of the Law of the Republic of Kazakhstan “On Counteraction of legitimization (laundering) of

1 According to the paragraph 1 and 2 of 14 of the Constitution of the Republic of Kazakhstan, everyone shall be equal before the law and court. No one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances.

incomes received by illegal means, and financing of terrorism). So, let's imagine that an individual received an income in his bank account in the amount of 15 million tenge from the sale of an apartment. He came to the bank to withdraw cash from his bank account. In that case, if an individual refuses to provide the bank with accurate information about what the purposes for which an individual *intends* to spend cash, the bank refuses the individual to withdraw cash from his bank account. It would seem that if this money is my property, then I can do everything I want with it within the law. But the state decides differently and establishes strict control over citizens and organizations. At the same time, in the considered example, an individual had to pay property tax, pay the bank interest for cash money and after all remain a person suspected of financing terrorism (sometimes managers of the banks present their client with the phrases "what if you are financing terrorist!"). The state condemns common citizens and organizations for only intentions, *which are sometimes imputed by the state itself*.

Simultaneously, the state decided to create an official offshore zone on its own separate territory, to exempt AIFC participants from taxation, to allow them to erode the previous history of their receipt of money, not to clarify for what purposes the income from investments will be spent in the future and to finance this non-transparent circulation.

It is unlikely that an investor in the AIFC will be asked, in order not to frighten him, how he previously received money he invested in the AIFC and where the future investment income is going to be spent. This is a good example of the fact that the state does not have equal treatment of individuals and organizations. Accordingly, the decision to create an international financial center was ill-considered and hasty.

We suppose, that the most correct, from a legal point of view, would be the approach of the legislator to decide on refuse of the special zones called "tax havens" or offshore. At the same time, it is necessary to reduce the overall tax burden on society, create attractive investment provisions and benefits in taxation for investing in truly social and economic important sectors (more industrial, than financial sector) regardless of the investment territory and encourage such investments in poorly developed regions. Nowadays this seems to be very relevant, especially in connection with regular restrictions on the import/export of goods due to the COVID-19, an increase the prices for imported goods (work, services), a decrease in the world stock of certain resources, materials and production forces.

Negotiability of the Cryptocurrency

The cryptocurrency and national digital currency theme is very relevant at the present time. The problems with the legal regulation of these objects have already been repeatedly discussed and continue to be discussed over the last years at the

global and regional levels. As is well known, according to the criterion of legislative legalization of cryptocurrency the states are divided into 3 groups: the states that have legalized cryptocurrency fully or partially; the states that have prohibited cryptocurrency and its circulation on the state's territory; the states that have not decided on the legal regime of cryptocurrency or deliberately ignore it.

For example, in Russian Federation the issue and circulation of digital currency (cryptocurrency), its use as a *means of payment* is allowed, albeit with certain restrictions. Kazakhstan distinguished itself again by choosing a dual path: a general ban on the cryptocurrency circulation throughout the territory of the Republic of Kazakhstan with its simultaneous legalization on a separate territory.

With the adoption and enactment of the Law of the Republic of Kazakhstan dated June 25, 2020 No. 347-VI "On amendments and additions to some legislative acts of the Republic of Kazakhstan on the regulation of digital technologies" digital assets are included in the list of objects of civil rights.

Before these changes in legislation of the Republic of Kazakhstan, cryptocurrency could be used as unnamed type of property by individuals and legal entities in any deals and transactions not prohibited by the legislation of the Republic of Kazakhstan. Now digital assets directly are included in the list of objects of civil rights as an independent element with a separate regulation of its legal regime in special legislation.

A digital asset at the present time can be an object of civil-law relations [Paragraph 2 of article 115 of the Civil Code of the Republic of Kazakhstan]. However this does not mean that every digital asset is a negotiable object of civil rights in the Republic of Kazakhstan. The features of the cryptocurrency turnover are established by the Law of the Republic of Kazakhstan "On informatization" and by AIFC acts [Paragraph 3-1 of article 115 of the Civil Code of the Republic of Kazakhstan].

The Law of the Republic of Kazakhstan "On informatization" establishes a definition of the "digital asset", as well as establishes that the digital assets can be secured and unsecured. The cryptocurrency is called an "unsecured digital asset".

Prohibition of the Issuance and Turnover of Cryptocurrency

As a general rule, the issuance and turnover of cryptocurrency (unsecured digital asset) is prohibited in the territory of the Republic of Kazakhstan, except for cases provided by the laws of the Republic of Kazakhstan. However, article 115 of the Civil Code of the Republic of Kazakhstan provides that the features of the cryptocurrency turnover (unsecured digital assets) can be established in the AIFC.

In AIFC Glossary cryptocurrency is called as "Private E-currency" (Private Electronic Currency, Private E-money) – a digital representation of value that

1. can be digitally traded and functions as (a) a medium of exchange; or (b) a unit of account; or (c) a store of value;
2. can be exchanged back-and-forth for Fiat Currency, but is neither issued nor guaranteed by the government of any jurisdiction, and
3. fulfils the above functions only by agreement within the community of users of the Private E-currency; and accordingly;
4. is to be distinguished from Fiat Currency and E-money [AIFC Glossary. AIFC Act No. FR0017 of 2018].

Cryptocurrency in the AIFC is recognized as an investment. Consequently, any investment activity carried out in the AIFC can be carried out in relation to cryptocurrency. This means that cryptocurrency in the AIFC can be bought, sold, exchanged for fiat currency or for another cryptocurrency [AIFC general rules. AIFC rules No. FR0001 of 2017].

It should be noted, that in the legislation of the Republic of Kazakhstan, on the one hand, and in the AIFC acts, on the other hand, cryptocurrency is called by different concepts and has different legal nature.

Several questions follow from this:

1. Is the same object of legal relations regulated by the AIFC acts and the legislation of the Republic of Kazakhstan?
2. If according to the Civil Code of the Republic of Kazakhstan the AIFC acts can establish exceptionally negotiability of the cryptocurrency, then is it acceptable for the AIFC acts to establish a different conceptual framework and legal regime of the cryptocurrency which is differ from the legislation of the Republic of Kazakhstan?

In our opinion, according to the paragraph 3–1 of article 115 of the Civil Code of the Republic of Kazakhstan and paragraph 3 of article 33–1 of the Law of the Republic of Kazakhstan “On informatization” AIFC acts should be established that on the territory of the AIFC, unlike the rest of territory of the Republic of Kazakhstan, the turnover of unsecured digital assets is allowed and the unsecured digital asset (cryptocurrency) can be used in transaction without restrictions as an object or means of payment, as well as investment or investment object. In fact it turned out that the AIFC acts seemingly regulate a completely different object of legal relations and establish its independent legal regime.

If, nevertheless, an unsecured digital asset and a private electronic currency are the same, then how justified is the establishment of a limited negotiability of an object on the basis of the specific territory? As a rule, the limited negotiability is established for rare, cultural significant or dangerous objects, not in a specific territory, but on

the basis of the subjects entitled to use these objects, or on the basis of the types of operations or transactions carried out with these objects.

So for what purpose does the state prohibit a cryptocurrency turnover: in order to protect society, individuals and organization from, allegedly, unstable, unsecured, unreliable and dangerous object of their investments or transactions or in order to ensure availability of this highly profitable financial product only for a separate group of society on a regional basis?

And legislator's logic would be understandable, if such division of opportunities was presented as a pilot project, as an approbation of the legal regulation of cryptocurrency in a small limited area in order to form perfect legislation in the future throughout the territory of the Republic of Kazakhstan. However, the cryptocurrency circulated and continues to circulate in the Republic of Kazakhstan only within the territory of the AIFC as some particularly attractive and unavailable financial product for everyone else.

In this case, the state's policy looks indefinite and dual: partial legalization of cryptocurrency exceptionally to keep up with more advanced countries and to please AIFC investors, on the one hand, and a general prohibition on cryptocurrency turnover throughout the rest territory of the Republic of Kazakhstan for all other citizens and organizations, on the other hand.

Attention is drawn to the obvious contradiction between the legal norms of the Civil Code of the Republic of Kazakhstan and the legal norms of the Law of the Republic of Kazakhstan "On informatization".

According to the paragraph 3–1 of article 115 of the Civil Code of the Republic of Kazakhstan, *the features of digital assets turnover* are determined by the legislation of the Republic of Kazakhstan, the AIFC acts.

The quoted article refers us, on the one hand, to the legislation of the Republic of Kazakhstan, and, on the other hand, to the AIFC acts.

According to the paragraph 3 of article 33–1 of the Law of the Republic of Kazakhstan "On informatization", the issuance and turnover of unsecured digital assets in the territory of the Republic of Kazakhstan is prohibited, except for the cases provided by the laws of the Republic of Kazakhstan.

In other words, the Law of the Republic of Kazakhstan "On informatization" allows exceptions, related to the establishment of the negotiability of unsecured digital assets, only in the *laws of the Republic of Kazakhstan*.

The AIFC acts are not the laws of the Republic of Kazakhstan, which is directly stated by both the Law of the Republic of Kazakhstan "On legal acts" and the Constitutional Law of the AIFC

In this case, taking into account the Law of the Republic of Kazakhstan "On informatization", the AIFC acts, which are not the laws of the Republic of Kazakhstan, can not determine the negotiability of the cryptocurrency other than that established in the Law of the Republic of Kazakhstan "On informatization".

The above argument can be objected by referring to paragraph 3–1 of article 115 of the Civil Code of the Republic of Kazakhstan, which establishes the possibility of direct reference to the AIFC acts in order to determine the negotiability of cryptocurrency in the territory of the AIFC. At the same time, the legislator still needs to determine a unified approach to which acts are capable to establish the negotiability of the cryptocurrency.

If in the future the state suddenly changes its position in its policy towards the AIFC and begins to claim that the regulation of cryptocurrency by the AIFC acts in the manner different from the manner established by the legislation of the Republic of Kazakhstan is unreasonable, then investors who have invested large amount of money in cryptocurrency as an investment object will suffer.

The inconsistent approach of the Kazakh legislator to the issue of legalizing certain objects only in a separate territory of the Republic of Kazakhstan or for an exceptional group of persons in this territory can lead to an imbalance in the rights and legitimate interests of citizens and organizations.

The state should think about and objectively determine what benefits the AIFC brings to the entire Kazakh society, which finances the existence and administration of the AIFC through taxes.

The investments should be carried out not only for the purpose of generating income for the investor, but also in the purpose of creating a public good, serving the public interests and obtaining other positive social effect by the recipient state. It is clear, that investments in the financial sector are designed to generate quick, not labour-intensive income, unlike the investments in the manufacturing sector. However, for the recipient state, as a spokesman of public interests, investments only in the financial sector will not bring any significant benefit in the long term.

If the existence and functioning of the AIFC objectively is necessary and useful for the state, which expresses the public interest of the whole society, then the legal norms on taxation of participants and authorities of the AIFC, firstly, should be rethought, and, secondly, should be enshrined in the appropriate normative legal act, which establishes taxes and cases of exemptions from their payment – in the Tax Code of the Republic of Kazakhstan.

If the AIFC is recognized as an independent and special territory, then its existence, administration and activities should be financed not from the state budget, but from the revenues to the AIFC budget in the form of taxes, fees and, possibly, revenues from the legal activities of the AIFC authorities and their organizations.

Finally, if the state prohibits the turnover of any object or asset, then this must be the reasonable and motivated prohibition. If cryptocurrency, in state's opinion, is dangerous, unstable, artificially overestimated, which entails negative financial consequences for society, then the state has no right to expose its separate territory and its citizens and organizations to such a risk. If, on the contrary, the cryptocurrency is an attractive investment object or can be used as an investment, then its use should be

allowed throughout the state, providing legal regulation and protection of the rights and legitimate interests of all persons carrying out transactions with cryptocurrency.

Conclusion

Summing up, we believe, that the main task of the state is to pursue a unify consistent policy (legal, social, economic, tax) both in relation to its residents and non-residents. That country is most attractive to the international community for mutually beneficial cooperation and investing, which has managed to build a steadily developing society, instill in it certain values and principles, ensure its own independent industry and economy, education, medicine, and, as a result, is able of offer the international market demanded and competitive goods, services, financial products and the same time preserve its political and economic independence and national identity.

Bibliography

- Aslanyan K.G. (2019), The history of creation, functions and purpose of world financialcenters, www.cyberleninka.ru, access as of 14 September 2021.
- Commentary on article 2 of the Tax Code of the Republic of Kazakhstan [in:] Commentary on the Tax Code of the Republic of Kazakhstan, The national chamber of entrepreneurs of the Republic of Kazakhstan*, Atameken, Almaty.
- Katasonov V.Yu. (2014), *About the interest on the loan, the court, the reckless. "Monetary Civilization" and the modern crisis*, Oxygen Publishing, Moscow.
- OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing, www.dx.doi.org/10.1787/9789264202719-en, access as of 19 September 2021.
- Suleymenov M.K., Duysenova A.Ye. (2021) The state of the Republic of Kazakhstan as a mixed jurisdiction, The subjects of civil law and the reform of the system of legal entities: Materials of the international scientific and practical conference, dedicated to the 50th anniversary of Doctor of Law, Professor Farkhav Sergeevich Karagusov, Caspian University, Almaty.
- Temirkhanov M. (2015), The regional financial center of Almaty: complete hopelessness www.forbes.kz, access as of 19 September 2021.

List of Legal Acts

- Constitution of the Republic of Kazakhstan (with amendments and additions as of 23th March 2019).
- The Constitutional Law of the Republic of Kazakhstan dated December 7, 2015 No. 438-V "On Astana International Financial Center" (with amendments and additions as of 30th December 2019).
- The Constitutional Law of the Republic of Kazakhstan dated December 30, 2019 No. 296-VI "On amendments and additions to some constitutional laws of the Republic of Kazakhstan".

- The Civil Code of the Republic of Kazakhstan (The General part) dated December 27, 1994 (with amendments and additions as of 1st October 2021).
- The Tax Code of the Republic of Kazakhstan dated December 25, 2017 No. 120–VI (with amendments and additions as of 24th June 2021).
- The Law of the Republic of Kazakhstan dated June 5, 2006 No. 145–III “On regional financial center of Almaty” (the act was repealed in accordance with the The Constitutional Law of the Republic of Kazakhstan dated December 7, 2015 No. 438–V “On Astana International Financial Center).
- The Law of the Republic of Kazakhstan dated August 28, 2009 No. 191–IV “On Counteraction of legitimization (laundering) of incomes received by illegal means, and financing of terrorism” (with amendments and additions as of 1st July 2021).
- The Law of the Republic of Kazakhstan dated June 10, 2014 No. 207–V “On innovation cluster “Park of the innovative technologies” (with amendments and additions as of 31st March 2021).
- The Law of the Republic of Kazakhstan dated November 24, 2015 No. 418–V “On informatization” (with amendments and additions as of 2nd January 2021).
- The Law of the Republic of Kazakhstan dated April 3, 2019 No. 242–VI “On special economic and industrial zones” (with amendments and additions as of 1st April 2021).
- The Law of the Republic of Kazakhstan dated December 10, 2020 No. 382–VI “On amendments and additions to the Tax Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan “On the enactment of the Tax Code of the Republic of Kazakhstan” (with amendments as of 24th May 2021).
- AIFC Glossary. AIFC Act No. FR0017 of 2018 (with amendments as of 28.06.2020, which commence on 1st July 2020).
- AIFC General Rules. AIFC RULES No. FR0001 of 2017 (with amendments as of 17.01.2020, which commence on 17th January 2020).