

**Clarification regarding the application of subparagraph 4) of paragraph 2 of article 397 of Code of the Republic of Kazakhstan *On Taxes and Other Obligatory Payments to the Budget*, dated 25 December 2017, to AIFC Participants authorised by the AFSA.**

In accordance with the letter of State Revenue Committee the Ministry of Finance of the Republic of Kazakhstan dated 15 February 2019 No. КГД -07-1-ЮЛ-А-151-КГД-3955.

*Disclaimer:*

*This document is designed to assist AIFC Participants ('Participants') to be familiar with clarification of State revenue authority the Ministry of finance of the Republic of Kazakhstan regarding the application of subparagraph 4) of paragraph 2 of article 397 of Code of the Republic of Kazakhstan № 120-VI dated 25 December 2017 "On Taxes and Other Obligatory Payments to the Budget" (the Tax Code) . Neither this document nor any of the clarification on application of the article of the Tax Code in this document constitutes legal advice and should not be acted upon as if advice had been given. If there is any inconsistency between any statement in this document and the relevant AIFC Regulations and Rules or associated Guidance, the AIFC Regulations, AIFC Rules and Guidance prevail.*

*Participants should, where they consider it necessary, obtain their own legal advice in relation to their specific situations.*

*This document does not cover each and every aspect of the AIFC Regulations and Rules. It selectively addresses frequently asked questions in relation to the application of subparagraph 4) of paragraph 2 of article 397 of the Tax Code to AIFC Participants.*

In accordance with the letter of State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan dated 15 February 2019 No. КГД -07-1-ЮЛ-А-151-КГД-3955.

In accordance with paragraph 1 of article 397 of Code of the Republic of Kazakhstan *On Taxes and Other Obligatory Payments to the Budget* dated 25 December 2017 (hereinafter - Tax Code), financial transactions, provided for in paragraph 2 of article 397 of the Tax Code, are exempt from value added tax (hereinafter – VAT).

According to subparagraph 4) of paragraph 2 of article 397 of the Tax Code, financial transactions exempt from VAT are services of professional securities market participants, as well as persons engaged in professional securities market activity without a license in accordance with the legislation of the Republic of Kazakhstan on permits and notifications.

In accordance with paragraph 1 of article 5 of Law of the Republic of Kazakhstan *On Securities Market* dated 2 July 2003 (hereinafter - the Law), subjects of securities market shall be individual and institutional investors, issuers, **professional participants of securities market**, organisers of auctions and self-regulatory organisations.

According to subparagraph 11) of article 1 of the Law, **professional participant of securities market** - a legal entity that carry out its activities at the securities market **on the basis of a license or in accordance with the legislative acts of the Republic of Kazakhstan**.

In accordance with paragraph 1 of article 6 of Constitutional Statute of the Republic of Kazakhstan *On Astana International Finance Centre* dated 7 December 2015 (hereinafter – the Constitutional Statute), **subject to the exemptions provided by this article, the Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the Budget** applies in the AIFC.

According to paragraph 1 of article 3 of the Constitutional Statute, the requirements and procedures for legal entities to be recognized as AIFC Participants, the type of activities that may be conducted in the AIFC, Licensing procedures and requirements for AIFC Participants, as well as procedures and requirements for the establishment and registration of legal entities in the AIFC and their organisational forms, are to be determined by AIFC Acts.

According to paragraph 3 of article 12 of the Constitutional Statute, the AFSA has the powers to conduct the registration, recognition and licensing of AIFC Participants.

Consequently, subparagraph 5) of article 1 of the Constitutional Statute specifies that AIFC Participants means legal entities registered under the Acting Law of the AIFC and legal entities recognised by the AIFC

Based on the above, **provisions of subparagraph 4) of paragraph 2 of article 397 of the Tax Code apply to AIFC Participants, operating under the license of the AFSA.**

In accordance with subparagraph 6) of article 14 of Law of the Republic of Kazakhstan *On Order of Consideration of References of Individuals and Legal Entities* dated 12 January 2007, Individual or legal entity that filed a reference shall have the right to appeal the actions (omission) of civil servants or decision adopted upon reference.