



On approval of the criteria for classifying a deposit (a group of deposits under one subsoil use contract, parts of a deposit) of solid types of minerals as low-profitable, as well as the Rules for determining the level of profitability and the level of internal rate of return

Unofficial translation

Resolution of the Government of the Republic of Kazakhstan dated May 21, 2018 № 282. The heading is as amended by Resolution of the Government of the Republic of Kazakhstan dated December 31, 2022 No. 1137 (shall be enforced ten calendar days after the day of its first official publication).

Unofficial translation

Footnote. The heading is as amended by Resolution of the Government of the Republic of Kazakhstan dated December 31, 2022 No. 1137 (shall be enforced ten calendar days after the day of its first official publication).

In accordance with paragraph 4 of Article 720 of the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget" (Tax Code) "The Government of the Republic of Kazakhstan **HEREBY RESOLVES:**

Footnote. Preamble - as amended by Resolution of the Government of the Republic of Kazakhstan dated December 31, 2022 No. 1137 (shall be enforced ten calendar days after the day of its first official publication).

1. To approve the attached:

- 1) criteria for classifying a deposit (a group of deposits under one subsoil use contract, parts of a deposit) of solid types of minerals as low-profitable;
- 2) Rules for determining the level of profitability and the level of internal rate of return.

Footnote. Paragraph 1 - as amended by Resolution of the Government of the Republic of Kazakhstan dated December 31, 2022 No. 1137 (shall be enforced ten calendar days after the day of its first official publication).

2. To deem as to be no longer in force some decisions of the Government of the Republic of Kazakhstan according to the annex to this regulation.

3. This regulation shall be put into effect from January 1, 2018 and shall be subject to official publication.

*Prime Minister
of the Republic of Kazakhstan*

B. Sagintayev

Criteria for classifying a deposit (a group of deposits under one subsoil use contract, parts of a deposit) of solid types of minerals as low-profitable

Footnote. Criteria - as amended by Resolution of the Government of the Republic of Kazakhstan dated December 31, 2022 No. 1137 (shall be enforced ten calendar days after the day of its first official publication).

The criterion for classifying a deposit (a group of deposits under one subsoil use contract, parts of a deposit) of solid types of minerals (hereinafter referred to as a Deposit) to the category of low profitability	Profitability rate by the field
The level of profitability of the deposit based on the results of the upcoming calendar year or the current incomplete calendar year	$5\% \geq$ level of profitability by the field

Note: the calculation of the level of profitability by the field shall be carried out by the subsoil user independently in accordance with the Rules for determining the level of profitability and the level of the internal rate of return, approved in accordance with paragraph 4 of Article 720 of the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget".

Approved
by the regulation no.282 of the
Government
of the Republic of Kazakhstan
dated May 21, 2018

The Rules for determining the level of profitability and the level of internal rate of return

Footnote. The Resolution is supplemented with Rules in accordance with the Resolution of the Government of the Republic of Kazakhstan dated December 31, 2022 No. 1137 (shall be enforced ten calendar days after the day of its first official publication).

Chapter 1. General Provisions

1. These Rules for determining the level of profitability and the level of internal rate of return (hereinafter referred to as the Rules) have been developed to implement paragraph 4 of Article 720 of the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget" (hereinafter referred to as the Tax Code).

2. The rules shall determine the procedure for determining the level of profitability and the level of internal rate of return for a deposit (groups of deposits under one subsoil use contract, parts of a deposit) of solid types of minerals (hereinafter referred to as a Deposit) and shall not apply to deposits of common minerals.

3. The following concepts shall be used in these Rules:

1) related parties - persons recognized as such in accordance with subparagraph 23) of Article 264 of the Tax Code;

2) mineral raw materials - mineral raw materials and (or) solid minerals in terms used for taxation purposes.

Other concepts and terms used in these Rules shall be applied in accordance with the Tax Code of the Republic of Kazakhstan.

Chapter 2. Classification of a deposit (a group of deposits under one subsoil use contract, parts of a deposit) of solid types of minerals to the category of low profitability

4. To classify a deposit as a low-profitable subsoil user operating under a subsoil use contract that provides for the development of a deposit, including those concluded before January 1, 2009, that meets the criteria for classifying a deposit (a group of deposits under one subsoil use contract, parts of a deposit) of solid minerals to the category of low profitability, approved in accordance with paragraph 4 of Article 720 of the Tax Code (hereinafter referred to as the Low profitability criteria), shall notify the authorized body in charge of ensuring tax revenues and payments to the budget.

In this case, a copy of the notification shall be sent by the subsoil user to the tax authority at the place of registration of the taxpayer.

5. Notification of classifying a deposit as low-margin for the current incomplete calendar year shall be submitted no later than September 1 of the calendar year in the form in accordance with the Annex to these Rules.

A notice of classifying a deposit as low-margin in the coming calendar year shall be submitted no earlier than September 1, but no later than December 1 of the current calendar year.

6. Deposits shall be classified as low-profitable if they meet the low-profitability criteria and meet the conditions established by paragraph 5 of these Rules.

7. Income and expenses (deductions) on exchange rate differences, as well as income and expenses (deductions) of the subsoil user on remuneration shall not be taken into account when calculating the planned level of profitability and the internal rate of return by the field.

Paragraph 1. Calculation of the planned level of profitability for a deposit (groups of deposits under one contract for subsoil use, parts of a deposit) of solid types of minerals

8. The calculation of the planned level of profitability for the deposit for the calendar year shall be based on the forecast data of the subsoil user, including prices for mineral raw materials, minerals, metal, and processed products for the relevant tax period, based on production volumes, subject to compliance with the legislation of the Republic of Kazakhstan on transfer pricing in the following way:

1) the planned level of profitability of the deposit, according to which the subsoil user sells the extracted mineral raw materials, including those that have undergone only primary processing, without further processing:

$$P_M = \frac{\text{ЧД}_M}{\text{СГД}_M} * 100 \%$$

where:

P_M - profitability by field;

ЧД_M - net income from the deposit, calculated in accordance with this subparagraph;

СГД_M - the total annual income for the deposit, including income from the sale of marketable products. At the same time, income from the sale of marketable products shall be calculated at actual sales prices.

The amount of net income from the deposit for the tax period shall be determined by the following formula:

$$\text{ЧД}_M = \text{НД}_M - \text{КПН}_M + \text{НД}_{\text{BC}}$$

,

where:

КПН_M - corporate income tax calculated on the deposit for the tax period concerning taxable income;

НД_{BC} - the taxable income of a related party is defined as the sum of:

taxable income of an interrelated party (excluding the reduction by the amount of income and expenses provided for in Article 288 of the Tax Code) that carries out primary processing, in respect of which such mined mineral raw materials are sold, including those that have undergone only primary processing (in this case, such taxable income shall be determined based on the proportion of volumes of mineral raw materials received from a taxpayer applying these Rules to the total volumes of processed mineral raw materials by an interconnected party);

taxable income of an interconnected party (excluding the reduction by the amount of income and expenses provided for in Article 288 of the Tax Code), which acquired in the territory of the Republic of Kazakhstan the extracted mineral raw materials, including those that underwent primary processing, from the taxpayer applying these Rules (at the same time, such taxable income shall be determined based on the proportion of volumes of mineral raw materials purchased from a taxpayer applying these Rules to the total volumes of acquisition of mineral raw materials by an interconnected party).

НД_M - taxable income from the deposit (excluding reduction by the amount of income and expenses provided for in Article 288 of the Tax Code) shall be determined subject to adjustment in accordance with the legislation of the Republic of Kazakhstan on transfer pricing according to the following formula:

$$\text{НД}_M = \text{СГД}_M - B_M + K_{\text{III}}$$

,

where:

B_M - deductions for the deposit calculated in accordance with the provisions of the Tax Code and taking into account the provisions of these Rules, associated with the extraction and primary processing of the extracted mineral raw materials;

K_{TP} - adjustment for transfer pricing in accordance with the legislation of the Republic of Kazakhstan;

2) the planned level of profitability of the deposit, according to which the subsoil user transfers a part or the entire volume of the extracted mineral raw materials for further processing at its own and (or) owned by another legal entity, production facilities, shall be determined by the following formula, except for the case specified in subparagraph 3) of this paragraph:

$$P_M = \frac{\text{ЧД}_M}{\text{СГД}_M} * 100 \%,$$

where:

P_M - profitability by field;

ЧД_M - net income from the deposit, calculated in accordance with this subparagraph.

The amount of net income from the deposit for the tax period shall be determined by the following formula:

$$\text{ЧД}_M = \text{НД}_M - \text{КПН}_M + \text{НД}_{BC},$$

where:

НД_{BC} – the taxable income of a related party is defined as the sum of:

taxable income of an interrelated party (excluding the reduction by the amount of income and expenses provided for in Article 288 of the Tax Code) that processes mineral raw materials, including primary processing (in this case, such taxable income shall be determined based on the share of volumes of mineral raw materials received from the taxpayer, applying these Rules to the total volumes of processed mineral raw materials, including primary processed);

taxable income of an interrelated party (excluding the reduction by the amount of income and expenses provided for in Article 288 of the Tax Code), which purchased the mined mineral raw materials, including those that underwent primary processing, and (or) the product of processing in the territory of the Republic of Kazakhstan from the taxpayer applying these Rules (whereby such taxable income shall be determined based on the ratio of the volumes of minerals purchased from the taxpayer applying these Rules to the total volumes of acquisitions of minerals by the related party).

НД_M - taxable income from the deposit (excluding reduction by the amount of income and expenses provided for article 288 of the Tax Code) shall be determined taking into

account the adjustment in accordance with the legislation of the Republic of Kazakhstan on transfer pricing according to the following formula:

$$НД_M = СГД_M - В_M + К_{ТП};$$

where:

$В_M$ - calculated in accordance with the provisions of the Tax Code and taking into account the provisions of these Rules, deductions for the deposit associated with the extraction, primary processing and subsequent processing of mineral raw materials mined at the deposit, applying the coefficient for the share of the deposit to the deductions for subsequent processing.

$К_{ТП}$ - transfer pricing adjustment in accordance with the legislation of the Republic of Kazakhstan.

The coefficient for the share of the field - the share of deductions for the contractual activity of the field in the total amount of deductions for all contractual activities of the taxpayer (used to distribute income and expenses (deductions)).

To calculate income, income shall be taken as a whole for the company, including income from sales, except for income not related to the extraction, primary processing and processing of extracted mineral raw materials (for example, income from the sale of minerals acquired under a contract for the sale of minerals).

If the sale of minerals (after processing that is not primary processing) shall be carried out based on the content of minerals in the processed product, the income from the sale of marketable products at the deposit shall be calculated for each type of mineral according to the following formula:

$$СГД_M = (T_p * T_{ДК} / T_{Д})_1 * Ц_1 + (T_p * T_{ДК} / T_{Д})_2 * Ц_2 + \dots + (T_p * T_{ДК} / T_{Д})_n * Ц_n;$$

where:

T_p - the physical volume of sales of finished products (after processing, which is not primary processing), obtained from the extracted mineral raw materials, in total for the company (for each type of mineral);

$T_{Д}$ - the physical volume of mineral content in the mined mineral raw material, directed for further processing, in total for the company (for each type of mineral);

$T_{ДК}$ - the physical volume of the mineral content in the mined mineral raw materials, directed for subsequent processing, by deposit (for each type of mineral);

$Ц$ - the actual price of the sale of minerals.

If the sale of a processed product obtained from the extracted mineral raw materials is carried out not based on the content of minerals in such a processed product, the total annual

income shall be calculated by applying the coefficient for the share of the deposit to the income from the sale of each processed product.

When selling mineral raw materials and (or) solid minerals, including those that have undergone primary processing, without their subsequent processing, the cost of their sale shall also be included in the total annual income;

3) the planned level of profitability of the deposit, according to which the subsoil user transfers part or all of the volume of mineral raw materials containing minerals specified in paragraph 4 articles 745 of the Tax Code, for subsequent processing at own and (or) production facilities belonging to another legal entity, shall be determined by the following formula:

$$P_M = \text{ЧД}_M / \text{СГД}_M * 100 \%,$$

,

where:

P_M - profitability by field;

ЧД_M - net income for the deposit, calculated in accordance with this subparagraph.

The amount of net income from the deposit for the tax period shall be determined by the following formula:

$$\text{ЧД}_M = \text{НД}_M - \text{КПН}_M,$$

,

where:

НД_M - taxable income from the deposit (excluding reduction by the amount of income and expenses provided for in Article 288 of the Tax Code) shall be determined taking into account the adjustment under the legislation of the Republic of Kazakhstan on transfer pricing according to the following formula:

$$\text{НД}_M = \text{СГД}_M - B_M + K_{\text{ТП}}$$

,

where:

B_M - calculated in accordance with the provisions of the Tax Code and taking into account the provisions of these Rules, deductions for the deposit associated with the extraction, primary processing and subsequent processing of mineral raw materials mined at the deposit, applying the coefficient for the share of the deposit to the deductions for subsequent processing.

At the same time, for the purposes of these Rules, deductions for expenses for the processing of mineral raw materials, including those carried out on the territory of the Republic of Kazakhstan, shall be accounted for by actual expenses, but no more than

deductions for processing of the previous period (calendar year), increased by the annual inflation rate in the Republic Kazakhstan. At the same time, if in the previous year, the actual deductions for processing exceeded the corresponding limit, then the deductions of the closest calendar year in which such deductions did not exceed such a limit shall be taken into account as deductions of the previous period in the current period.

The coefficient for the share of the field is the share of deductions for the contractual activity of the field in the total amount of deductions for all contractual activities of the taxpayer (used for the distribution of income and deductions);

КТЦ - transfer pricing adjustment in accordance with the legislation of the Republic of Kazakhstan.

To calculate income, income shall be taken as a whole for the company, including income from the sale of marketable products, except for income not related to the extraction, primary processing and processing of mined mineral raw materials (for example, income from the sale of minerals acquired under a contract for the sale of minerals).

If the sale of minerals (after processing that is not primary processing) is carried out based on the content of minerals in the processed product, the income from the sale of marketable products at the deposit shall be calculated for each type of mineral according to the following formula:

$$СГД_M = (T_p * T_{ДК}/T_Д)_1 * Ц_1 + (T_p * T_{ДК}/T_Д)_2 * Ц_2 + \dots + (T_p * T_{ДК} / T_Д)_n * Ц_n.$$

,

where:

T_p - the physical volume of sales of finished products (after processing, which is not primary processing), obtained from the extracted mineral raw materials, in total for the company (for each type of mineral);

$T_Д$ – the physical volume of mineral content in the mined mineral raw material, directed for further processing, in total for the company (for each type of mineral);

$T_{ДК}$ - the physical volume of the mineral content in the mined mineral raw materials, directed for subsequent processing, by deposit (for each type of mineral);

$Ц$ - selling price, formed based on subparagraph 1) paragraph 3 article 745 of the Tax Code, taking into account the adjustments provided for by the legislation of the Republic of Kazakhstan on transfer pricing. If the mineral raw materials contain simultaneously the minerals specified in paragraph 4 of Article 745 of the Tax Code and other types of minerals, then when selling other types of minerals for the total annual income indicator, the actual sale price shall be applied.

In the case of the sale of mineral raw materials and (or) solid minerals, including those that have undergone primary processing, without their subsequent processing, the cost of their

sale using the price formed based on subparagraph 1) of paragraph 3 of Article 745 of the Tax Code is also subject to inclusion in the total annual income.

This subparagraph shall apply exclusively when selling (including to the domestic market of the Republic of Kazakhstan) minerals specified in paragraph 4 of Article 745 of the Tax Code, mineral raw materials and (or) processed products containing such minerals, at sales prices formed based on subparagraph 1) paragraph 3 of Article 745 of the Tax Code, taking into account the adjustments provided for by the legislation of the Republic of Kazakhstan on transfer pricing unless otherwise provided by the legislation of the Republic of Kazakhstan.

For the purposes of these Rules, it shall not be allowed to apply the same deductions more than once.

9. Mineral extraction tax rates (hereinafter referred to as MET) for a deposit classified as low-margin shall be applied in the amount of MET rates established by the Tax Code as of December 31, 2022.

Paragraph 2. Calculation of the internal rate of return for a deposit (groups of deposits under one subsoil use contract, parts of a deposit) of solid types of minerals

10. MET shall be calculated at the deposit at a rate of 0 percent within 60 months from the date of commencement of commercial production, subject to the conditions stipulated in paragraph 3 of Article 746 of the Tax Code.

11. The level of the internal rate of return by the field MET shall be calculated based on the cash flows of the subsoil user according to the following formula:

$$\text{BHP} = \text{ДП} / \text{СГД} * 100\%,$$

,

where:

БНР - internal rate of return - the payback ratio of investments made for the corresponding tax period;

ДП - cash flow - a calculated indicator of the return on investment, calculated based on cash flows for the corresponding tax period;

СГД - the total annual income of the deposit for the corresponding tax period.

Cash flow (CF) shall be determined by the following formula:

$$\text{ДП} = \text{ДП}_1 + \text{ДП}_2 + \dots + \text{Д}_n$$

The total annual income for the deposit shall be determined by the formula:

$$\text{СГД} = \text{СГД}_1 + \text{СГД}_2 + \dots + \text{СГД}_n.$$

,

where:

1, 2,... n - period (year).

ДП1-п, - the annual cash flow of a subsoil user shall be determined as the difference between the total annual income for the deposit and the costs incurred for the deposit in the course of carrying out activities under the contract (license) for subsoil use;

СГД1-п - the amount of the total annual income from the field, received by the subsoil user from activities under the contract (license) for subsoil use, shall be determined in accordance with these Rules.

The costs incurred by the subsoil user by the field under the contract (license) shall include:

1) capital costs - costs, including those incurred before the start of commercial production, capitalized in the course of subsoil use operations and amortized in accordance with tax legislation;

2) expenses deductible in accordance with tax legislation, except for accrued depreciation on capital costs and interest on borrowed funds, which are subject to capitalization;

3) the amount of corporate income tax calculated in accordance with the tax legislation for the deposit.

Annex
to the Rules for determining the level
of profitability and the level
of the internal rate of return

Form

Notification of classifying a deposit

(a group of deposits under one subsoil use contract, parts of a deposit)

of solid types of minerals as low-profitable

1. Full name of the subsoil user (legal entity) or last name, first name and patronymic (if any) (individual):

_____.

2. Location (postal address): _____.

3. Business ID or Individual ID number: _____.

_____.

4. Subsoil use contract under which mining shall be carried out minerals and it is assumed that

the subsoil use contract will be assigned, fields (groups of fields under one contract, parts of a field),

providing for the development of a deposit of solid types of useful minerals, to the category of low-margin.

4.1. Full name, parties to the contract, date of conclusion of the contract:

_____.

4.2. Date and number of registration of the contract with the competent authority:

_____.
4.3. Name of the contract (deposit): _____.

4.4. Location of the contract area (fields, groups of fields under one contract, part of the field):

_____.
4.5. Type of mined mineral: _____.

5. Contact person (last name, first name and patronymic (if any) position, phone number):

(last name, first name and patronymic (if any) of the head, position)

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Date of notification: " _____ " _____ 20__

Annex
to the regulation no.282 of the
Government
of the Republic of Kazakhstan
dated May 21, 2018

List of certain invalidated decisions of the Government of the Republic of Kazakhstan

1. Regulation of the Government of the Republic of Kazakhstan dated October 31, 2012 no.1379 "On approval of the Rules for rating a deposit (group of deposits, a part of a deposit) of solid types of mineral resources except for commonly occurred, as marginally profitable and taxation in terms of mineral extraction tax" (Collected Acts of the President and the Government of the Republic of Kazakhstan, 2012, no.75-76, art. 1122).

2. Regulation of the Government of the Republic of Kazakhstan dated August 5, 2014 no .892 "On amendments and supplements to the Regulation of the Government of the Republic of Kazakhstan dated October 31, 2012 no.1379 "On approval of the Rules for rating a deposit (group of deposits, a part of a deposit) of solid types of mineral resources except for commonly occurred, as marginally profitable and taxation in terms of mineral extraction tax" (Collected Acts of the President and the Government of the Republic of Kazakhstan, 2014, no .51, art. 516).

3. Paragraph 11 of amendments and supplements, which shall be introduced into certain decisions of the Government of the Republic of Kazakhstan, approved by the regulation of the Government of the Republic of Kazakhstan dated September 19,2014 no.995 "Certain issues of the Ministry for Investments and Development of the Republic of Kazakhstan" (Collected Acts of the President and the Government of the Republic of Kazakhstan, 2014, no .57, art. 546).

4. Regulation of the Government of the Republic of Kazakhstan dated June 27, 2016 no .443 "On amendments to the Regulation of the Government of the Republic of Kazakhstan dated October 31, 2012 no.1379 "On approval of the Rules for rating a deposit (group of deposits, a part of a deposit) of solid types of mineral resources except for commonly occurred, as marginally profitable and taxation in terms of mineral extraction tax" (Collected Acts of the President and the Government of the Republic of Kazakhstan, 2016, no. 40, art. 255).

5. Regulation of the Government of the Republic of Kazakhstan dated September 8, 2017 no.553 "On amendments and supplements to the Regulation of the Government of the Republic of Kazakhstan dated October 31, 2012 no.1379 "On approval of the Rules for rating a deposit (group of deposits, a part of a deposit) of solid types of mineral resources except for commonly occurred, as marginally profitable and taxation in terms of mineral extraction tax" and deeming invalidated certain decisions of the Government of the Republic of Kazakhstan" (Collected Acts of the President and the Government of the Republic of Kazakhstan, 2017, no . 40-41, art. 277).