

**ARTICLE**

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CONSULTATION AND THE IMPLEMENTATION OF LAWS

A number of important pieces of legislation are slated in the books for the upcoming spring session of Parliament, including extensive amendments to tax legislation, a new law on Mining, the revised Labour Law and various amendments to laws in the banking sector aimed at implementation of the ongoing IMF program.

One key issue that still impacts on Mongolia's legislative programs is the matter of proper consultation with stakeholders, including the public, business organizations and potentially international experts. On this topic there is still a significant lack of consistency of approach, and the US-Mongolia Transparency Agreement remains signed but not yet formally implemented. This Agreement, among other things, would introduce an obligatory consultation period for key pieces of economic legislation.

See-saw on Personal Income Tax

Two recent examples of this inconsistency come to mind. The issue of personal income tax has been an interesting see-saw in terms of developments.

First introduced conceptually in Autumn of 2016, likely as a result of preliminary negotiations with the IMF, the measures, which included increases in social insurance contributions and increases in pensionable age, received a lukewarm reception from the public. These measures were then put in the desk drawer as negotiations with the IMF continued, and then re-introduced in April 2017, passed by the Parliament and due to become effective on 1 January 2018.

Within a few weeks of their effectiveness, the progressive tax system was repealed and Mongolia reverted back to a flat rate of 10 per cent. While this development was no doubt popular and welcomed, the timing left a lot to be desired. In preparation for implementation, a number of private sector businesses had increased salaries to account for the 25 per cent top rate of tax. Of course, this change of direction on short notice leaves a number of employers in a difficult position.

Tax on transfer of licenses and rights

Another last-minute decision in November 2018, connected with the approval of the state budget, saw tax on the transfer of mineral licenses and land rights formally introduced at a 30 per cent rate, introducing concepts of

majority ownership and beneficial interest for offshore holders. While this had always been informally an issue on the transfer of immediate interests in mineral licenses (i.e. buying and selling Mongolian companies holding licenses), the introduction of more comprehensive tax protection was pushed through Parliament without consultation.

It was then incumbent on the relevant ministries to produce underlying regulations on valuation methodology and related matters within a very short period of time. Indeed, these regulations were not issued in time for the implementation date of 1 January 2018, leaving persons involved in ongoing transactions unclear as to their status.

There are rumours that the tax rate applicable to transfer of mineral licenses and land rights might now be reduced from 30 per cent to 10 per cent. Again, this is an example of short-term thinking and hurried implementation that could have been avoided with a wide-ranging and proper consultation on the issue.

A better approach

While the above examples do not cover lawmakers in glory, the position on certain other major pieces of legislation is quite different. The Ministry of Finance has been recently running consultations on the other proposed revisions to the tax legislation, with input from private sector business groups, such as the Business Council of Mongolia and the American Chamber of Commerce, and while the timeframe is quite tight, this is undoubtedly the correct approach.

Likewise, the revisions to the Labour Law have been extensively commented upon since their introduction in 2017 and accordingly there should not be any major surprises when the bill is put before Parliament.

However, the process remains haphazard, no doubt contributed to in part by the fact that laws can be initiated from many diverse sources. It would be of great benefit to all stakeholders, from public sector, private sector, interested local aimag and soum governors and interested parties to the image of lawmakers themselves to implement and strictly adhere to a clear and consistent policy on the introduction of new laws and regulations that have a material impact on the economy.