
Overview of key provisions of the new Tax code.

Part 2

February 2018

In brief

This issue includes updates about certain key amendments in the 2018 tax legislation in relation to international taxation and taxation of controlled foreign companies (“CFCs”).

If not stated otherwise, changes are effective from 1 January 2018.

In detail

Income of a non-resident from sources in Kazakhstan

According to the new Tax Code¹, income of a non-resident received from provision of engineering and marketing services, is recognised as income of the non-resident from sources in Kazakhstan.

The ownership period for shares and participation interest

For the purposes of the exemption of a non-resident’s income (dividends and capital gains), the ownership period for shares and participation interest includes the period of ownership by previous owners, if such shares or participation interest were received by a taxpayer as a result of reorganisation by the previous owners.

Initial cost for determining capital gains

The method of determining the initial cost of non-depreciable assets for calculation of capital gains is clarified i.e. there are separate provisions for determining initial cost of securities and of a participation interest.

Capital gains exemption on sale of subsurface users

The capital gains exemption on sale of subsurface users is applicable, if the following conditions are met:

- the subsurface user undertakes further processing (after primary processing) of at least 35%* of the extracted minerals, including coal, by its own production facilities in Kazakhstan or owned by its affiliated resident entity in Kazakhstan and
- further processing (as mentioned above) occurs during the twelve-month period preceding the date of sale of the subsurface user.

**(from 2019 - 40%, 2020 & 2021 - 50%, and from 2022 - 70%)*

¹ The Code No. 120-VI “On taxes and other obligatory payments to the state budget” dated 25 December 2017 (the “new Tax Code”)

“Beneficial ownership” requirement for use of full tax exemption

The “beneficial ownership” requirement is introduced for use of double tax treaty (“DTT”) provisions by a tax agent, for full tax exemption on a non-resident’s service income received from sources in Kazakhstan.

Documentary evidence for application of DTT by non-residents on income from provision of services in Kazakhstan

If a non-resident providing services in Kazakhstan has no charter documents because there are no requirements in the legislation of a foreign state or other obligations for registration in the trade register, the non-resident may submit to the tax agent a document indicating:

- the organizational structure of the consolidated group of which the non-resident is a participant,
- for all group members, their name, location (country), place of foundation (establishment), state and tax registration number.

Permanent establishment (“PE”) of a non-resident

Conditions to recognise an individual / a legal entity as a dependent agent of a non-resident in determining the creation of a PE of a non-resident in Kazakhstan, *inter alia*, include:

- conclusion of a contract by the individual or legal entity for provision of fee-based services;
- playing a principal role in concluding such a contract;
- transferring the ownership right (right to use) for property belonging to the non-resident.

Reduced branch profit tax rate

A non-resident is not entitled to apply DTT provisions without a tax residency certificate at the date of submission of the corporate income tax return. However, if the corporate income tax is paid, the non-resident may apply DTT provisions during the statute of limitation period, provided an additional corporate income tax return and the tax residency certificate are submitted to the tax authorities.

Accounting for foreign exchange differences by a PE

Foreign exchange gains and losses from liabilities of a PE to its head office (or other structural subdivisions) are excluded from the aggregate annual income / deductions of the PE.

Statement confirming income from Kazakhstan sources

A tax agent may obtain a statement confirming the amount of income received by a non-resident from Kazakhstan sources (as well as taxes withheld or paid on such income). The tax agent does not need a power of attorney from the non-resident to obtain such statement from the tax authorities.

Taxation of capital gain on sale of non-residents

A taxpayer cannot reduce its taxable income for capital gains on sale of shares or a participation interest in a non-resident entity, even if held for more than three years.

Personal income tax rate on dividends from foreign sources

Dividends received by an individual from non-Kazakhstan sources are taxed at 10%.

Taxation of a CFC

A CFC is a non-resident entity (or other foreign form of organisation) which meets both the following conditions:

- (i) 25% or more of its shares belong directly, indirectly or constructively to an entity or an individual tax resident in Kazakhstan, or the entity is connected with the resident by means of control;
- (ii) the effective income tax rate of the non-resident is less than 10% or the non-resident is registered in a tax black-listed jurisdiction.

The consolidated profit of a CFC (and PE of the CFC) is included in the taxable income of a resident entity or individual and subject to corporate or personal income tax respectively in Kazakhstan.

A structural subdivision or a PE is recognised as the PE of the CFC when:

- (i) the PE is registered in a tax black-listed jurisdiction; or

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- (ii) the PE is registered in a foreign country and its effective income tax rate is less than 10%.

Double taxation of the financial profit of the CFC may be eliminated by:

- offsetting foreign tax against Kazakh corporate income tax;
- applying an exemption;
- deducting foreign income / dividends from the financial profit of the CFC.

Notification of a resident's ownership of a CFC, before 1 January 2018, should be submitted to the tax authorities before 1 January 2019. In subsequent tax periods, notification should be submitted not later than 31 March of the year following the tax-reporting period.

The takeaway

Changes in the tax legislation are substantial and likely to have a significant impact on your business.

We will be pleased to discuss the changes with you.

Contacts

If you are interested in obtaining additional information, please contact the PwC specialists working in the group serving your company, or anyone of the following.



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