

Court practice on tax disputes

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1. Branch of a foreign legal entity against Tax department of Kyzylorda region

Tax audit period: 2014

Date of audit: 2011-2012

Type of audit: complex tax audit

Assessments: approximately KZT 109 million

Court instance: Supreme Court

Date: November 2015

Major issues: interest expenses

Description of the situation:

The tax authorities challenged deductibility of interest expenses accrued and paid on loan received by the Branch from a Kazakhstan bank.

Based on the position of the tax authorities, only non-resident legal entity could be the borrower of funds as, according to the Civil Code, branches are not regarded as separate legal entities. Hence, as per the tax authorities, in the situation under consideration, provisions of Article 198.6(3) of the Tax Code should be applicable, based on which interest expenses related to loans provided by a non-resident legal entity to its permanent establishment are not subject to CIT deduction.

The tax authorities believe that the Branch should have been guided by Article 208 of the Tax Code, i.e. claim CIT deduction for interest on loans as part of G&A expenses.

The position of the court:

Supreme Court decided in favor of the tax authorities.

PwC position:

We believe that position of the tax authorities and court contradicts provisions of the tax legislation.

In this case, the head office did not provide its branch with a loan, i.e. funds were received directly from the Kazakhstan bank.

According to Article 198.1 of the Tax Code, determination of income, calculation and payment of CIT on the income of non-resident legal entities generated from business operations in Kazakhstan through a permanent establishment should be performed in accordance with Articles 83 – 149 of the Tax Code. In particular, Article 103 of the Tax Code directly allows deduction of interest expenses by permanent establishments of non-resident legal entities.

2. Company against State Revenue Department of Atyrau region

Date of audit: 2014

Type of audit: thematic tax audit of CIT and VAT

Assessments: approximately KZT 168 million

Court instance: Cassation Court

Date: September 2015

Major issues: expenses on visa support / obtaining work permits

Description of the situation:

Main activity of the Company is provision of visa support services and services connected with obtaining work permits for foreign personnel. For purposes of rendering service the Company used subcontractors.

The tax authorities challenged deductibility of expenses on subcontractor services related to visa support and obtaining work permits.

Both the tax authorities and court did not consider documents supporting relevant expenses (contracts, tax invoices, payment orders, acts of acceptance and copies of work permits).

The court questioned validity of transactions as subcontractors were absent at the place of their registration (which prohibited the possibility of cross-checks). Moreover, main correspondence regarding work permits was between the authorised state bodies and Company's clients, resulting in doubts as to provision of services by the Company.

The position of the court:

The Court of Cassation decided in favor of the tax authorities.

Our recommendations:

We recommend paying due attention to the choice of suppliers by taking into account their history and market reputation.

In addition, we recommend paying due attention to systematization and storage of supporting documentation (including business correspondence).

If you are interested in additional information, please contact PwC specialists, working within the group servicing your company, or any mentioned below person.

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