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Alert on the decision of the Appeal commission of the Ministry of finance on tax dispute

On 24 November, 2023 the Appeal commission of the Ministry of finance of the Republic of Kazakhstan (the '**Appeal Commission**') issued a decision on the tax dispute concerning transfer pricing control of a loan agreement.

The dispute background:

- Regional tax authorities subjected a Kazakh company to a thematic tax audit on transfer pricing issues. As a result, the Kazakh company was charged with withholding tax and penalty.
- The ground for such charging was that the interest rates of the loan granted by a German company to the Kazakh company exceeded the interest rates of the loans granted by the Kazakh banks. i.e. the market rates.
- The regional tax authorities used the National Bank of the Republic of Kazakhstan as the source for the market rates determination as the officially recognised sources (like Bloomberg) did not provide for such information.
- The Kazakh company disagreed with the conclusion of the regional tax authorities on the ground that it used the data of comparable transactions with specific criteria (credit rate, deadline, interest type, currency etc.). While the data of the National Bank of the Republic of Kazakhstan is an aggregate data not taking into consideration the additional information on the loan conditions.

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