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The Kazakh tax authorities approach towards the dividends tax exemption

This article covers such sensitive topic as tax exemption of dividends distributed by a Kazakh company in address of its foreign shareholders (participants). In particular, the recent tendency in the approach of the Kazakh tax authorities adopted in this regard.

Under a general rule, the dividends received by a foreign shareholder (participant) from a Kazakh company are subject to withholding tax at rate of 15% in Kazakhstan. However, such dividends may be exempted from withholding tax upon compliance with all following conditions:

- the foreign shareholder (participant) is not registered in a tax haven;
- the foreign shareholder (participant) owns its share (participant interest) for more than 3 years as of the date of the dividends' accrual;
- the Kazakh company, which distributes the dividends, is not a subsoil user;
- no more than half of the assets of the Kazakh company, which distributes the dividends, are comprised of the property of the subsoil users.

In addition to the abovementioned conditions, withholding tax exemption is not applicable to the dividends distributed by the Kazakh companies which enjoy corporate income tax exemptions (for instance, non-profit organizations, participants of the special economic zones, investors implementing investment contracts etc.).

At the first glance, the last limitation might seem reasonable – if income of the Kazakh company has been already exempted from taxation, why should it be subject to other additional tax exemptions like the one in respect of the dividends? Moreover, the dividends are, generally, recognized as a part of the net income distributed by the Kazakh company among its participants (shareholders). However, neither the tax legislation, nor any other legislative act provide for a clear definition of the net income. Thus, generally, it is implied that the net income is the income which excludes the expenses on its generation as well as taxes and other obligatory payments. Hence, the prohibition on application of the dividends tax exemption by the taxpayers enjoying the corporate income tax exemptions appears to be justified.

But what if the Kazakh company applies a special accounting procedure like, for instance, the one applicable to the long-term contracts? The long-term contracts are recognized as the contracts on manufacture, installation, construction which cannot be completed within a calendar year in which they were started. The Kazakh companies implementing such contracts are allowed to determine their corporate income tax obligations on the basis of either actual or completion method. Under the actual method the taxable income is determined on the basis of income received in the reporting calendar year which at the same time shall not be less than the expenses incurred during that year. While under the completion method the taxable income is recognized as the total amount of income to be received under the contract multiplied by the percentage of the contract's completion. The percentage of the contract's completion is, in its turn, determined on the basis of the expenses of the previous and current calendar years divided by the total amount of expenses under the contract.

This article was firstly published in Investor's Voice, February 2021

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