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Multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting

By the end of June of this year Kazakhstan signed the Multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (MLI).

The MLI is designed under the OECD-lead effort to help countries counter tax avoidance and speed cross-border of transnational tax dispute resolution.

It is expected that the MLI provisions will add to the existing bilateral double tax treaties (DTT) provisions agreed as a result of the base erosion and profit shifting plan. However, such amendments will be made only upon negotiation with each country party to the DTT. As was reported by the Minister of Finance of the Republic of Kazakhstan, Kazakhstan intends to apply the MLI provisions to 45 DTT's.

The MLI provides for the following main changes:

- ▶ the foreign legal entity is entitled to apply for the DTT exemptions only upon the following conditions:
 - if the foreign legal entity proves that it is not a holding company, or
 - if the participants of the foreign legal entity are deemed to be one of the following persons: resident individuals, non-commercial organisations, state authorities and companies which shares are traded on the recognized stock exchange;
- ▶ the resident's income received through the partnerships as fiscally transparent entities is recognized as income of such resident;
- ▶ the foreign companies with double residence will not be able to apply the DTT exemptions unless the tax authorities of the countries in which they are recognised as residents will determine the residence of such companies through the mutual agreement procedure;
- ▶ the foreign company creates a permanent establishment in Kazakhstan if it is operating even through an independent agent who is formally not authorized to sign the contracts on behalf of such company, but on a permanent basis plays the important role in the signing of such contracts by the non-resident;
- ▶ the non-resident's subdivisions involved in a supplementary activity (of a "preparatory and auxiliary character") may be recognised as permanent establishments upon the presence of the other legally related non-resident's subdivision recognised as the permanent establishment in Kazakhstan;
- ▶ the contracts on performance of works in the territory of Kazakhstan may result in the permanent establishment, if such works are performed by different foreign entities which are related to each other, even if the length of the services under each contract does not exceed 12 months period. The periods of such contracts will be summed with each other and the overall excess of the contracts periods for more than 12 months will result in the permanent establishment formation.

About GRATA International

GRATA International is the largest independent Kazakhstani law firm, and one of the leading law firms in Central Asia and the Caspian Region. GRATA has provided a wide range of legal services in these regions for over 25 years.

Since its inception in 1992 the Firm has developed a very experienced Tax Practice. In 2005, the structure of the firm was fully established, featuring a specific department dealing with Tax Law. Unlike many consulting companies, GRATA's tax team consists mainly of lawyers and auditors, who have experience working with the tax authorities. This distinct perspective enables us to provide our clients with correct and practical advice.

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- International Taxation;
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- Corporate Taxation and Tax Planning;
- Individual Taxation;
- Tax Support and Structuring in M&A Transactions;
- Due Diligence of Tax Accounting (Tax Audit);
- Tax Administration.

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