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Review of the Ruling of the Supreme Court of Kazakhstan on a Tax Dispute

On 17 January 2024, the Administrative Collegium of the Supreme Court issued a ruling on a dispute relating to the taxation of Kazakhstan-source income of a non-resident who also has a registered permanent establishment in Kazakhstan*.

The main conclusions of the Supreme Court:

- ▶ The provisions of Article 666.2 of the Tax Code contradict the provisions of Article 4.3 of the Constitution and the General Part (Article 2.5) of the Tax Code.
- ▶ The presence of a registered permanent establishment in Kazakhstan does not deprive the nonresident of the right to apply the provisions of the relevant tax convention to income received by from sources in Kazakhstan.
- ▶ For the purposes of determining whether a permanent establishment exists, the place where the services are performed is relevant, i.e. the service should be provided by the non-resident through its employees or other hired personnel in Kazakhstan. However, for services provided remotely, the location of the customer of such services is the determining factor. In this case, the Supreme Court refers to the provisions of the Tax Code regulating the taxation of services by VAT (Article 378).
- ▶ If a non-resident's activities resulting in the receipt of income from Kazakhstani sources coincide with the activities of its registered permanent establishment, such income of the non-resident should be recognised as income received by its permanent establishment and subject to CIT in Kazakhstan.
- ▶ If a non-resident's activities resulting in income from Kazakhstani sources align with those of its registered permanent establishment, such income should be recognized as income received by the permanent establishment and subject to corporate income tax in Kazakhstan.

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