



OFFSHORE TAX IN BELARUS AND KAZAKHSTAN : FROM CALCULATION TO PAYMENT



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INTRODUCTION

When dealing with foreign markets, companies interact with companies from different territories, including those from offshore jurisdictions. Many countries have approved their own list of such zones.

Counterparties of offshore companies are required to comply with additional requirements that are provided for by national legislation.

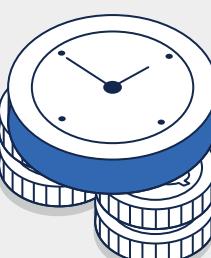
Within the framework of the tax law committee, a team of partners, leading lawyers and heads of tax practices of GRATA International prepared a brief overview of the legal regulation of offshore tax in Belarus and Kazakhstan, including:



- 1 which countries and territories are classified as offshore zones



- 2 in what amounts and in what order such a fee should be paid



- 3 cases when the offshore fee is not paid



OFFSHORE TAX IN BELARUS: FROM CALCULATION TO PAYMENT

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Working with companies from offshore zones provides additional obligations for Belarusian counterparties and requires certain control.

An offshore zone, for taxation purposes in Belarus, is recognized as a state (territory) that has a preferential tax regime and (or) does not provide for the disclosure and provision of information on financial transactions.

The list of such zones was approved by the **Decree of the President of Belarus No. 353 dated May 25, 2006**, which currently includes 52 jurisdictions.

For example,

- the British Virgin Islands
- Montserrat
- the Maldives
- the Principality of Andorra
- the Principality of Liechtenstein
- the Republic of Montenegro and others are recognized as offshores.

However, the Republic of Cyprus and the Kingdom of the Netherlands are not included in the list.



15 %



The offshore tax rate is 15% of the amount that is transferred to a non-resident (monetary obligation) or of the contract price (non-monetary obligation).



Residents of the Hi-Tech Park do not pay an offshore fee when paying for advertising, marketing, intermediary services, as well as when paying (transferring) dividends to their founders (participants), part of the profit accrued to the owner of their property.

However, not for any interaction with a non-resident of offshore zones it is necessary to pay such a fee. It does not need to be paid when the offshore company returns the funds previously received as a loan or loan, when making payments under contracts for the carriage of goods by sea and under contracts for freight forwarding, in some cases when changing persons in the obligation.



For example, if a resident of the Dominican Republic (offshore zone) provided marketing services to a Belarusian commercial organization. Before payment for these services, the offshore company ceded the right of claim under the contract to a French resident.

Since in this situation there has been a change of persons in the obligation, the parties to which are the resident and the non-resident registered in the offshore zone, the offshore fee must be paid.



It should be remembered that without the listed offshore fee, a Belarusian bank will not make a payment in relation to an offshore company or an account opened in an offshore zone.



In this situation, the bank acts as a currency control agent on the basis of banking legislation.



To confirm the payment, a payment order must be submitted to the bank for the payment of the offshore fee.

If necessary, additional information about the company from the offshore zone will be requested from the Belarusian organization.

OFFSHORE TAX IN KAZAKHSTAN: FROM CALCULATION TO PAYMENT



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This article provides a brief overview of the essence and the payment procedure of the so-called offshore tax in Kazakhstan.

First of all, it should be noted that in Kazakhstan, **for the taxation purposes, an offshore zone is recognised as a foreign state or a territory** which answers one of the following criteria:

- 1 such state or territory income tax rate is less than 10%;
- 2 such state or territory legislation provides, with exceptions, for a confidentiality of certain information (financial information, information on the founders etc.).¹





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On the basis of the abovementioned criteria the Ministry of finance of the Republic of Kazakhstan approves the list of offshores which as of today includes 79 states and territories².



The interaction between the tax residents of Kazakhstan and the persons registered in the offshores may entail the offshore tax obligation in Kazakhstan.

Thus, if a legal entity registered in one of such offshores receives any type of income (fee for the services, dividends etc.) from a legal entity, recognised as the tax resident of Kazakhstan, such income will be subject to withholding tax at the rate of 20%⁴.



Moreover, it should be noted that such income will not fall under the tax exemptions which are generally available under the Kazakh tax legislation (for instance, a lower withholding tax rate in respect of royalty or a full withholding tax exemption in respect of capital gain).

In such situations, the obligations on calculation, withholding, transfer to the budget and reporting of withholding tax rest with the tax resident of Kazakhstan in the capacity of a tax agent⁵.



²The Order of the Minister of finance of the Republic of Kazakhstan dated 8 February 2018 No. 142 'On approval of the list of offshores'.

³A legal entity registered in accordance with the Kazakh legislation as well as the legal entity registered in accordance with the foreign legislation but with the Kazakh place of management.

⁴Articles 644.1.4 and 646.2 of the Tax Code.

⁵Article 645.6 of the Tax Code.

In particular, withholding tax shall be paid prior to 25th of the month following the month in which income was paid to the person registered in the offshore and reported in the following order:



prior to 15th of the second month following the calendar quarter in which the income was paid, if such income was paid in the first, second or third calendar quarter;



prior to 31st March of the year following the calendar quarter in which the income was paid, if such income was paid in the fourth calendar quarter⁷.

However, an opposite situation might occur, if an individual⁸ or a legal entity, recognised as the tax resident of Kazakhstan, receives income from a person registered in the offshore zone, in particular, in the context of the controlled foreign companies (hereinafter – the ‘CFC’) or the permanent establishment of the latter.



Thus, a legal entity registered in the offshore zone may be recognised as the CFC of the tax resident of Kazakhstan in case the latter owns 25% or more of the voting shares (participant interests) in such person or controls¹⁰ it.

Herewith, in this case, the ownership implies both direct and indirect (for instance, through another company or a close relative) ownership, while control is determined in accordance with the IFRS or other international standards recognised by the stock exchanges¹¹.



Thus, in case with the legal entity recognised as the tax resident of Kazakhstan, the CFC’s income shall be included in such resident’s aggregate annual income which, in its turn, shall be levied with corporate income tax (hereinafter – ‘CIT’) at the rate of 20%.

In general, CIT in respect of the CFC’s income shall be reported before 31st March and paid before 10th April of the calendar year following the year in which such income was received¹³.

⁶ Article 647.1 of the Tax Code.

⁷ Article 648 of the Tax Code.

⁸ An individual with the Kazakh centre of vital interests (Kazakh citizenship/residence permit, family and real estate) as well as the individual residing in Kazakhstan for more than 183 calendar days in any consecutive 12-months period.

⁹ Excluding indirect ownership through another tax resident.

¹⁰ Article 294.1 of the Tax Code.

¹¹ Article 294.4 of the Tax Code.

¹² Article 297.1 of the Tax Code.

¹³ Articles 363.3 and 315.1 of the Tax Code.



The similar provisions are envisaged in respect of the individuals recognised as the tax residents of Kazakhstan.



In particular, the CFC's income shall be included in the individual's annual income which, in its turn, shall be levied with personal income tax (hereinafter - 'PIT') at the rate of 10%.



PIT in respect of the CFC's income, in general, shall also be reported before 31st March and paid before 10th April of the calendar year following the year in which such income received¹⁴.



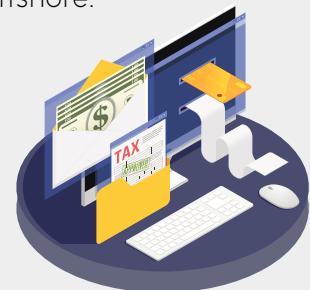
In addition, it should be noted that the participation of the tax resident of Kazakhstan in the CFC, apart from the abovementioned obligations, entails the obligation to submit a respective notification to the tax authorities at the place of such resident's location/residence.

In particular, this notification shall be submitted before 31st March of the year following the year in which the tax resident of Kazakhstan obtained voting shares (participant interests) or control in the CFC.



In view of the above, one might conclude that in Kazakhstan the offshore tax obligations are triggered in case the tax resident of Kazakhstan pays income to a person registered in the offshore or in the opposite situation when the tax resident of Kazakhstan receives income from the person registered in the offshore.

Herewith, in both cases, the tax obligations in respect of the offshore tax rest with the tax resident of Kazakhstan in capacity of either the tax agent or the taxpayer.





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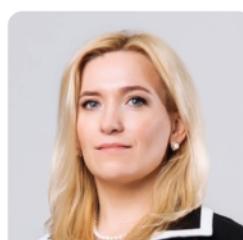
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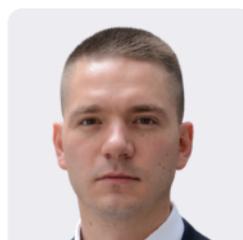
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