



**GRATA**  
INTERNATIONAL

# **PERMANENT ESTABLISHMENT REGISTRATION PROCESS IN MONGOLIA**

ALERT

# PERMANENT ESTABLISHMENT REGISTRATION PROCESS IN MONGOLIA

October, 2023

## PERMANENT ESTABLISHMENT:

Permanent Establishment is defined in Article 6 of the Corporate Income Tax Law and Articles 5 and 7 of the “International Convention on the Prevention of Double Taxation and Tax Evasion on Income and Capital”. In short, a **PERMANENT ESTABLISHMENT** is a unit that fully or partially conducts the activities of a taxpayer in Mongolia.

### Scope:

The following units shall be deemed as permanent establishment:

- units of management of an enterprise;
- branches and departments;
- units responsible for training, seminars and exhibitions;
- units responsible for warehousing, sale and services;
- units responsible for mines, oil or gas boreholes, and mining of minerals;
- plants;
- other departments, units and places.

In addition, the following units, persons, and activities are considered to be permanent establishment:

1

Units undertaking activities with regard to construction sites, buildings, assembling and installation facilities, and other related construction and controlling works for a period of 90 days or more during the course of consecutive 12 months shall be deemed as representative offices;

2

Units providing technical, consulting, management, controlling and other services to taxpayers residing in Mongolia, on its own or through hired skills, for a period 183 days or more during the course of consecutive 12 months shall be deemed as representative offices;

3

Units conducting the following activities in Mongolia on behalf of a taxpayer not residing in Mongolia shall be considered as permanent establishment:

- a) the storage, sale and supply of goods and products;
- b) the conclusion of contracts in person or the arrangement for concluding contracts on behalf of a non-resident taxpayer without altering the main conditions of the contracts. Any contract featuring any of the following conditions:
  - i. to be established in the name of a non-resident taxpayer;

# PERMANENT ESTABLISHMENT REGISTRATION PROCESS IN MONGOLIA

October, 2023

- ii. to transfer properties or the rights to use or possess such properties that a non-resident taxpayer owns or, if doesn't own, has the rights to use or possess;
- iii. to provide services offered by a taxpayer not residing in Mongolia.

***Any non-resident taxpayer receiving insurance premiums, other than multiple insurance, or offering a risk insurance in Mongolia through other parties shall be considered as having a permanent establishment in Mongolia.***

International Convention on the Prevention of Double Taxation and Tax Evasion on Income and on Capital (the "Double Taxation Agreement"), which has been ratified by the State Great Khural of Mongolia (or the Parliament) and is in force, equates the term "permanent establishment" with the 'permanent establishment under the Corporate Income Tax Law. Currently, there are double tax treaties signed with 26 countries in force, and the duration of activity to deem as having a permanent establishment varies.

**According to the Double Tax Agreement, the following activities shall not be deemed as "permanent establishment":**

- 1 the use of facilities solely for the purpose of storage, display or delivery of goods or products belonging to the enterprise;
- 2 the maintenance of a stock of goods or products belonging to the enterprise solely for the purpose of storage, display or delivery;
- 3 the maintenance of a stock of goods or products belonging to the enterprise solely for the purpose of processing by another enterprise;
- 4 the maintenance of a fixed place of business solely for the purpose of purchasing goods or products or of collecting information, for the enterprise;
- 5 the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- 6 the maintenance of a fixed place of business solely for any combination of activities mentioned above, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

A person – other than an agent of an independent status to whom the next paragraph applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned above which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

---

# PERMANENT ESTABLISHMENT REGISTRATION PROCESS IN MONGOLIA

October, 2023

An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **REGISTRATION OF PERMANENT ESTABLISHMENT AS TAXPAYER**

The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Relations in connection with registration, deregistration, payment, and reporting as a taxpayer are governed by the “Procedure for registration, deregistration, tax payment and reporting of permanent establishment” which is approved under Order No. A/272 of the Head of the General Tax Authority of Mongolia.

### **Registration period as a taxpayer**

In determining whether a person, not residing in Mongolia and earning income from Mongolia, meets the requirements for a permanent establishment in Mongolia or has a permanent establishment in Mongolia, the relevant documents and facts are taken into account and the person is deemed to have created a permanent establishment **i) on the date of commencement of operations**  
**or ii) the date of signing the contract,**  
whichever comes first.

The person qualified as the permanent establishment is obliged to apply for registration as a taxpayer to the respective tax office through online or in paper within **10 working days** before the start of its operation, submitting required materials.

### **Required materials:**

The following documents are required for the registration as a taxpayer. These include:

1. Application form for registration as a taxpayer;
2. The decision on setting up the permanent establishment of a foreign enterprise in Mongolia, stipulating the type of business, duration of activity, name of management, and the number of employees, etc.;
3. Taxpayer’s certificate proving registration as a taxpayer in the foreign country;

4. Documents confirming the registration of the parent company as a legal entity /copy/, company charter /copy/;
5. A copy of an agreement signed with a resident person of Mongolia confirming that income will be generated from Mongolia;
6. Proof of the address of the permanent establishment /lease agreement, etc./;
7. Decision and a power of attorney appointing the Head of the permanent establishment;
8. Copies of resumes and documents of the Head of the permanent establishment /copy of an identity card for a Mongolian citizen; a copy of a temporary identity card or passport for a foreign national registered at the Immigration Agency of Mongolia/;
9. The opening balance of the permanent establishment.

*The tax office will send a notice of registration as a taxpayer based on tax records, databases and other relevant information to an unregistered person.*

## **Submission and processing of an application**

A founder, head, or an authorized representative of the permanent establishment shall be entitled to file an application.

The tax office shall process the application, create registration information in the Unified Tax Database (the “UTD”), and send the username and password to the taxpayer’s unified tax information system to the registered contact number or email address.

A notice of registration as a taxpayer may be sent to the person without the rights of legal entity (permanent establishment) based on the information of the registration authority and the UTD.

The permanent establishment shall register as a taxpayer within 7 days after receiving the notification.

## **Liability**

The fact that a person obliged to register as a permanent establishment is not registered so or operates in the form of another type of legal entity does not constitute as grounds for exemption from the legal obligation to pay taxes.

If the taxpayer does not register as a permanent establishment or does not submit to the tax authority the necessary evidence to determine the taxable income of the permanent establishment, the tax authority registers the permanent establishment and determines the tax rate in accordance with the “Procedure for determining by benchmark price method” in accordance with Article 36 of the General Tax Law, and taxes will be reimbursed.

## **DEREGISTRATION OF THE PERMANENT ESTABLISHMENT**

***The tax office deregisters a permanent establishment from the taxpayer registration upon the following grounds:***

Decision on liquidation of the permanent establishment by the state and local organizations and members that made the decision to establish the permanent establishment.

In the above case, an application for deregistration from the taxpayer registry in electronic or paper form, and the tax office carries out the following actions:

1. assess the taxpayer's tax risk and subject it to a tax audit if a risk arises;
2. settle tax debts and excess balances in accordance with law;
3. collect information such as the decision on liquidation by the authorized organizations and members, court judgments, inspections and risk assessment documents, account closure information, closing balance, etc., and store them in its profile.
4. the unit responsible for registration at the relevant tax office executes a "Taxpayer Exemption Card", reviews and confirms the decision and transfers it to the state administrative body in charge of the state registration;
5. notify the taxpayer of deregistration from the registry of taxpayers.

"Taxpayer's Exemption Card" will not be **executed** if the above actions are not taken and the obligation to pay tax has not been terminated.

The above activities shall be fully implemented and the person shall be deregistered in the UTD on the basis of relevant documents.

---



## About GRATA International

GRATA International is a dynamically developing international law firm which provides services for projects in the countries of the former Soviet Union and Eastern Europe: full coverage of the entire region with network of offices, highly qualified team of professionals suited for cross-border projects. Firm's reputation and expertise are confirmed by testimonials from transnational clients and leading international ratings.

A wide network of office operating under one system and platform delivers great convenience for our clients. Any office can act as a "one-stop-shop" for its clients and provide them with access to services in other cities and countries. If necessary, inter-office teams with relevant experience are assembled to provide solutions to complex tasks. Service quality is assured by a clear system of organisation of this process.

GRATA International is present in the following jurisdictions: Armenia (Yerevan), Azerbaijan (Baku), Belarus (Minsk), Cyprus (Limassol), Georgia (Tbilisi), Kazakhstan (Aktau, Almaty, Atyrau, Astana, and other cities), Kyrgyz Republic (Bishkek), Moldova (Chisinau), Mongolia (Ulaanbaatar), Russia (Moscow, St. Petersburg, Rostov-on-Don, Samara), Tajikistan (Dushanbe), Turkmenistan (Ashgabat), Turkey (Istanbul), UAE (Dubai), Ukraine (Kyiv) and Uzbekistan (Tashkent).

In addition to its offices, GRATA International has representatives in the UK (London), Germany (Frankfurt), the USA (New York), China (Beijing), Switzerland (Zurich), Malaysia (Kuala Lumpur).

**GRATA International is regularly acclaimed by leading international rankings: Chambers Global, Chambers Asia-Pacific, Legal 500, IFLR1000, WWL, Asialaw Profiles, and is featured in Deals of the Year Awards by China Business Law Journal.**

### Key Industry Sectors:

- Banking & Finance
- Construction & Infrastructure
- Industry & Trade
- Mining
- Oil & Gas
- Pharmaceuticals & Healthcare
- Technology, Media & Telecommunications
- Transport



> 22

countries of presence



> 31

years of experience



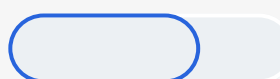
> 250

professionals



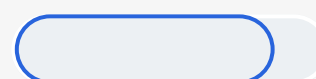
> 15

practice areas



7 700+

clients



15 000+

projects



# Global Presence

## Integrated Offices

- |  |  |                               |
|--|--|-------------------------------|
| <b>Azerbaijan</b><br>Baku                                      | <b>Kyrgyzstan</b><br>Bishkek                               | <b>Tajikistan</b><br>Dushanbe |
| <b>Belarus</b><br>Minsk  | <b>Moldova</b><br>Chisinau                                 | <b>Ukraine</b><br>Kyiv        |
| <b>Georgia</b><br>Tbilisi                                      | <b>Mongolia</b><br>Ulaanbaatar                             | <b>Uzbekistan</b><br>Tashkent |
| <b>Kazakhstan</b><br>Astana<br>Almaty<br>Atyrau<br>Aktau, etc. | <b>Russia</b><br>Moscow<br>Rostov-on-Don<br>St. Petersburg | <b>Armenia</b><br>Yerevan     |

## Associate Offices

- Cyprus**  
Limassol
- Russia**  
Samara
- Turkmenistan**  
Ashgabat
- Turkey**  
Istanbul
- UAE**  
Dubai

## Representatives

- China**  
Beijing
- Germany**  
Frankfurt
- Malaysia**  
Kuala Lumpur
- Switzerland**  
Zurich
- UK**  
London
- USA**  
New York