

**ALERT****Agreement to improve international tax compliance**

At present, the Parliament of the Republic of Kazakhstan considers a law on ratification of the Agreement between the Government of the Republic of Kazakhstan and the Government of the United States of America to improve international tax compliance dated 11 September 2017 (hereinafter – the ‘**Agreement**’).

The Agreement’s objective is to enforce the Foreign account tax compliance act (hereinafter – the ‘**FATCA**’). This act was adopted in 2010 in the USA in order to prevent tax avoidance of the American citizens and companies. Thus, in particular, the FATCA obliges foreign financial institutions to provide the American tax authorities with the information on financial accounts of the abovementioned persons and entities. This information may be provided either through a competent authority (Model 1) or by the financial institution itself (Model 2).

In view of this, the Agreement with certain exceptions (for instance, the Kazakh financial institutions with the Kazakh clients only) will affect the Kazakh and American financial institutions performing one or several of the following types of activity:

- holding of financial assets for the account of others (residents as well as non-residents of the USA), if income from such activity is equal to or exceeds 20% from the gross income;
- accepting of deposits in the ordinary course of banking or similar business;
- making of payments with respect to insurance contracts with a cash value exceeding USD 50,000 or annuity contracts\*;
- trading in money market instruments (cheques, bills, certificates of deposits, derivatives, etc.), foreign exchange, exchange, interest rate and index instruments, transferable securities\*\*;
- commodity futures trading\*\*;
- individual and collective portfolio management\*\*;
- otherwise investing, administering or managing funds/money on behalf of other persons (residents as well as non-residents of the USA)\*\*.<sup>1</sup>

The abovementioned institutions will be obliged to provide the following information with certain exceptions (for instance, the accounts with a balance not exceeding USD 50,000) on an annual basis in respect of the maintained accounts of the Kazakh and American residents:

- the name, address as well as identification number of the account holder;
- the account number or its equivalent;
- the account balance;
- the total gross amount of the account’s proceeds.<sup>2</sup>

Herewith, the abovementioned information shall be provided for the periods, starting from 2014, until 30 September of the year following the year in which the Agreement will come into effect. In the following periods, the abovementioned information shall be provided until 1 October of the year following the reporting year.<sup>3</sup>

As the Agreement is signed under the Model 1, the abovementioned information will be provided by the Kazakh and American financial institutions through the Ministry of finance of the RoK/the Department of the treasury of the USA.<sup>4</sup>

Moreover, the Kazakh financial institutions will also be obliged to:

- register on the web-site of the Internal revenue service (the IRS);
- provide the information on all payments made in 2015 and 2016 in address of the financial institutions recognised as non-compliant for the FATCA purposes;

<sup>1</sup> Subparagraphs g), h), i), j), k), o), p) and y) of paragraph 1 of the Article 1 of the Agreement.

<sup>2</sup> Subparagraph aa) of paragraph 1 of the Article and the Article 2 of the Agreement.

<sup>3</sup> Paragraph 5 of the Article 3 of the Agreement.

<sup>4</sup> Subparagraph f) of paragraph 1 of the Article 1 and subparagraphs a)-b) of paragraph 1 of the Article 4 of the Agreement.

- withhold or provide information on withholding of 30% American withholding tax in respect of the payments made in address of the financial institutions recognised as non-compliant for the FATCA purposes (in certain cases).<sup>5</sup>

In summary, the Agreement will affect the Kazakh and American financial institutions performing one or several of the abovementioned types of activity.

The Kazakh financial institutions will be obliged to provide the Ministry of finance of the RoK with the information on the maintained accounts of the American residents as well as all the payments made in 2015 and 2016 in address of the financial institutions recognised as non-compliant for the FATCA purposes. Moreover, the Kazakh financial institutions will be required to register on the IRS's web-site as well as withhold 30% American withholding tax in certain cases.

The obligations of the American financial institutions, on the other hand, will be limited to provision of the information on the maintained accounts of the Kazakh residents to the Ministry of finance of the USA.

Notes:

\* The Kazakh and American financial institutions will be affected by the Agreement in case they hold the organisation performing this type of activity.

\*\* The Kazakh and American financial institutions will be affected by the Agreement in case they are managed by the organisation performing these types of activity.

## 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 almost 30 years.

Throughout its existence the Firm has developed an experienced tax practice. In view of this, in 2005 the tax department was formed. Unlike many consulting companies, GRATA's tax team comprised mainly of lawyers and auditors who have experience of working in the tax authorities. This feature enables us to provide our clients not only correct but practically feasible advice.

## Services

- Withholding Tax Refund;
- VAT Refund from the State Budget;
- Corporate Taxation;
- Tax Support and Structure in M&A Transactions;
- Tax Investment Preferences and Tax Planning;
- Taxation of Bank and Financial Transactions;
- Taxation of Subsoil Users;
- Taxation of Non-Residents;
- Taxation of Individuals;
- Tax Due Diligence (Tax Audit);
- Representation and Protection of Interests in the Course of Tax Disputes;

For additional information, please visit [www.gratanet.com](http://www.gratanet.com), or contact [tax@gratanet.com](mailto:tax@gratanet.com).

*This alert for informational purposes only and shall not be treated as a legal advice. GRATA International is not responsible for any consequences arising from the use of the aforementioned information without its consent.*

---

<sup>5</sup> Paragraph 1 of the Article 4 of the Agreement.