

Offshore tax in Kazakhstan: from calculation to payment

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 is recognised as a foreign state or a territory which answers one of the following criteria:

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

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 Kazakhstan³, 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 the abovementioned situation, 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. 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 offshore⁶. 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 quarter.⁷

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, 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 may be recognised as the CFC of the tax resident of Kazakhstan in case the latter owns⁹ 25% or more of the voting shares (participant interests) in

¹ Article 294.3 of the Code of the Republic of Kazakhstan dated 25 December 2017 No. 120-VI ‘On taxes and other obligatory payments to the budget (Tax Code)’ (hereinafter – the ‘**Tax Code**’).

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

³ A 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.

⁴ Articles 644.1.4 and 646.2 of the Tax Code.

⁵ Article 645.6 of the Tax Code.

⁶ Article 647.1.1 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.

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.

The CFC's income is determined on the basis of its audited consolidated financial reports and shall be included in the taxable income of the tax resident of Kazakhstan¹².

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.

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.

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.

¹⁴ Articles 362.1 and 364.1 of the Tax Code.