NewsFlash

Tax and Legal

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Dear Readers,

On 20 February 2020, Kazakhstan ratified[1] the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereinafter – the MLI). After the document enters into effect, the procedure for the application of Kazakhstan tax treaties will change.

The purpose of the MLI is to tackle tax treaty abuse triggering tax evasion or avoidance. The MLI will apply to only those tax treaties that are in force between parties to the MLI.

The MLI establishes a package of obligatory norms (the minimum standard) to be met by all parties to the MLI and optional provisions applicable with respect to a tax treaty only if both contracting states choose to apply it. Accordingly, after the MLI enters into effect, the tax treatment of a cross-border transaction will depend on the provisions of local tax legislation, an applicable tax treaty and the MLI (if the MLI positions of the contracting states match).

Parties to the MLI notify the Organisation for Economic Cooperation and Development (OECD) on their MLI positions and on completion of the MLI ratification. OECD developed and placed on their website[2] a preliminary version of the MLI matching database that reflects the matching outcome of the MLI positions for a selected pair of countries-signatories to the MLI.

Kazakhstan's position with respect to application of the MLI assume:

— The tax treaty should not apply to exempt income from taxation in both tax treaty countries;

— Prevention of granting tax treaty benefits to arrangements the principal purposes of which is to obtain the treaty benefits (Principal Purpose Test);

— Introduction of certain criteria for persons to qualify for tax treaty benefits (Simplified Limitation on Benefits);

— The minimum shareholding period to qualify for a reduced tax rate on dividends - the beneficiary holds a required amount of the capital or voting power of the company paying the dividends for more than a year;

— Anti-abuse rules for permanent establishments preventing the artificial avoidance of permanent establishment status, through splitting-up of contracts, commissionnaire arrangements or specific activity exemptions;

— Taxation in Kazakhstan of capital gains from alienation of shares or interests in entities deriving their value principally from immovable property located in Kazakhstan, regardless of the tax treaty exemptions, if any.

The MLI will enter into force on the first day of the month following a three-month period beginning on the date of the deposit by Kazakhstan of its ratification instrument. Once in force, the provisions of the MLI will apply from 1 January of the year following its entry into force with respect to withholding taxes, and for all other taxes with respect to taxable periods beginning on or after the expiration of a 6-month period following the date of entry into force.

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[1] Law No. 304-VI of the Republic of Kazakhstan On Ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, dated 20 February 2020

[2] http://www.oecd.org/ctp/treaties/mli-matching-database.htm

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