NewsFlash

Tax and Legal

October 2020

Dear Colleagues,

On 14 October 2020, the President of Kazakhstan signed a law on ratification of the Protocol[1] introducing amendments to the Kazakhstan – Luxembourg Tax Treaty (hereinafter, the "Tax Treaty").

According to the current version of Article 10 of the Tax Treaty, dividends may be taxed at a reduced rate in the country of their origin, i.e. when dividends are paid by a tax resident of Luxembourg (Kazakhstan) to a resident of Kazakhstan (Luxembourg), the tax rate at the source of payment can be reduced to 5% if the minimum participation condition is met.

The draft Protocol supplements Article 10 of the Tax Treaty, which regulates the taxation of dividends, with paragraph 2-1. According to this amendment, dividends distributed in favor of the following organizations are fully exempt from taxation (provided that they are beneficial owners of the dividends):

— Government or Central or local authority,

— Central (National) Bank,

— Any other institution wholly owned by the Government.

Paragraph 2-1 also provides a list of organizations in Luxembourg that would be subject to similar benefits.

Please note that Luxembourg's domestic legislation allows Luxembourg companies to exempt dividends distributed to their foreign shareholders from withholding tax in Luxembourg under certain conditions, including the condition requiring foreign shareholders to be subject to income tax in the countries of their residence. Since organizations with government participation in Kazakhstan may not be taxpayers of corporate income tax in Kazakhstan, this exemption should not apply to their dividend income received from Luxembourg sources. This might be one of the reasons for adding paragraph 2-1 to the Tax Treaty between two countries.

The Protocol will enter into force after the corresponding notifications about the completion of the ratification procedures are received. The newly introduced provisions of the Protocol will be applicable in both States from the year following the year when the Protocol enters into force.

The amendments to the Tax Treaty directly relate to the taxation of dividends the beneficial owners of which are financial regulators as well as organizations owned by the Governments of both countries. Thus, these organizations may consider Luxembourg as a jurisdiction for registering foreign special purpose companies (for example, sub-holding companies, financial companies and others).

[1] *Protocol on Amendments to the Convention between the Government of the Republic of Kazakhstan and the Government of the Grand Duchy of Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed in Astana on 26 June 2008, subject to the amendments by the Protocol signed in Luxembourg on 3 May 2012 (Nur-Sultan and Luxembourg, 14 October 2019)*

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