



Tax Alert

Tax exemption of dividends paid to non-residents

January 2021



Dear readers,

On December 10, 2020, the President of the Republic of Kazakhstan (hereinafter, "Kazakhstan") signed Law No. 382-VI On Amendments to the Code of Kazakhstan On Taxes and Other Obligatory Payments to the Budget (hereinafter, the "Tax Code" or "tax legislation") that introduced a number of important amendments to Kazakh tax legislation. The amendments, inter alia, have an impact on taxation of dividends paid by Kazakh companies to their foreign shareholders or participants (stake owners).

What happened?

As you may know, the Kazakh tax authorities have begun to pay close attention to the application of tax benefits stipulated by Tax Code Articles 645.9(4), 645.9(5) and 654(4). As such, in 2020 the tax authorities issued a number of tax notifications challenging Kazakh tax residents' application of the tax exemption on dividends paid to non-resident individuals and non-resident legal entities.

In particular, the tax authorities questioned the taxpayers' approach to calculating net income distributable among participants (stake owners) and income payable on shares. The Kazakh tax authorities argued that income payable on shares or net income distributed among participants (stake owners) in the form of dividends should be calculated on the basis of

corporate income tax (hereinafter, the "CIT") returns – not the financial statements – and determined as taxable income less CIT. However, prior to 1 January 2021, in our opinion, this position of the tax authorities had no legal basis.

Starting from 1 January 2021, the provisions of Tax Code Articles 645.9(4), 645.9(5) and 654(4) are supplemented with a clarification that the tax exemption on dividends paid to non-residents may be applicable only to **income on which CIT has been paid**. In practice, this provision excludes the possibility of a resident taxpayer to apply the tax exemption related to dividends in case such taxpayer has no taxable income or has losses according to its CIT returns.

Why is this important?

In practice, the restrictions associated with the amendments to Tax Code Articles 645.9(4), 645.9(5) and 654(4) expose taxpayers to greater risks with regards to the taxation of dividends that were paid before the year 2021. Additionally, starting from this year it may lead to an increased tax burden and tax inefficiency for groups of companies.

Therefore, we recommend that the following Kazakh companies pay closer attention to the above issue:

- holding companies that receive dividends from Kazakh subsidiaries and redistribute such dividends to foreign investors;
- companies that distribute dividends to foreign investors if such companies' net income per CIT returns is less than net profit distributable to foreign investors in the form of dividends on the basis of its financial statements.

How can KPMG help?

KPMG professionals will be glad to assist you with the following:



Analysis of the current group structure, including intragroup operations to assess the effect of the tax amendments



Analysis of options for restructuring the current holding structure



Development and implementation of a transition plan from the current to the target group structure



Assistance in tax disputes on international tax matters



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