

# NewsFlash

## Tax and Legal

February 2021



Dear Readers,

**The Law<sup>1</sup> on Amendments and Addenda to Tax Legislation (hereinafter – the “Law”) introduced changes to the procedure for taxation of controlled foreign companies or permanent establishments of controlled foreign companies (hereinafter – the “CFC”). In this NewsFlash issue, we provide you with an overview of these amendments.**

### Basic Concepts

The Law introduced the terms of audited financial statements, approved financial statements, aggregate income, nominal income tax rate, passive income, unified organizational structure of the consolidated group.

The Law established the date (31 December of the reporting period) to check the criteria of ownership or control over a foreign company. Accordingly, a tax resident submits a statement on participation/control in the CFC as of 31 December of the reporting period.

A foreign entity is not regarded as the CFC if the entity:

- is registered in a tax treaty country with a nominal income tax rate of more than 75 percent of the corporate tax rate in Kazakhstan. The tax authorities will approve the list of such countries on an annual basis;
- has the aggregate income less than the established threshold of 150 495<sup>2</sup> times the monthly index factor. This provision does not apply to companies registered in tax havens; or
- reports losses in the stand-alone financial statements (*entered into effect on 1 January 2018*).

The Law also clarifies the procedure for the calculation of the effective income tax rate.

### Tax Exemptions

The CFC is exempt from taxation in Kazakhstan if:

- The share of CFC’s passive income is less than 20 percent. This norm does not apply to companies registered in a tax haven.
- The CFC is directly and/or indirectly owned/controlled by an investment resident of Astana International Financial Center (*enters into effect on 1 January 2021*).

The Law extends and clarifies the list of documents substantiating the CFC’s tax exemptions.

The Law abolishes the obligation of the tax authorities to publish on their website the information on income taxation in foreign countries.

<sup>1</sup> Law No. 382-VI of the Republic of Kazakhstan On Amendments and Addenda to the Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the State (the Tax Code) and Law of the Republic of Kazakhstan On the Introduction of the Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the State (the Tax Code), dated 10 December 2020

<sup>2</sup> 438,993,915 tenge in 2021

## Profits Calculation Procedure

To determine CFC's financial profit, taxpayers are allowed to use the CFC's stand-alone financial statements prepared in accordance with the CFC's country of incorporation standards (without having an audit opinion). The tax authorities may request a taxpayer to provide the CFC's audited financial statements. The taxpayer is required to submit the CFC's audited financial statements to the tax authorities (with mandatory translation into Kazakh or Russian) within 250 calendar days from the date of the request.

The Law introduces two formulas for the calculation of the CFC's financial profit in Kazakhstan. The first formula is based on the share of the CFC's passive income to the aggregate (total) income. The second formula is the difference between the CFC's financial profit before taxation and the sum of the CFC's tax deductions and losses. A taxpayer may choose one of the two formulas and apply it to all the CFCs. However, the first formula should not be used when calculating financial profit of a CFC registered in a tax haven.

A taxpayer may apply the CFC's losses against the CFC's profits if the losses are recognized in the CFC's stand-alone financial statements. Losses can be carried forward for two periods. The Law prohibits taxpayers to carry forward losses of a CFC registered in a tax haven. A taxpayer cannot credit losses of one CFC to the profits of another CFC or to its own profits.

The Law clarifies and supplements the following:

- the procedure for adjustment of the consolidated financial statements to arrive at the CFC's financial profit in the absence of the CFC's stand-alone financial statements;
- the list of income reducing the CFC's financial profit for tax purposes in Kazakhstan;
- the list of documents supporting the calculation of CFC's financial profit.

The reduction of CFC's financial profit for tax purposes in Kazakhstan is not possible for a CFC registered in a tax haven.

The Law requires taxpayers to submit to the tax authorities a transformation document disclosing detailed information on the ownership and taxation of the CFC.

A taxpayer may credit its net operating losses for the reporting and two previous tax periods against the CFC's taxable income (except for the CFC registered in tax havens).

Most of the amendments entered into effect on 1 January 2020, except for the two norms the effective dates of which we indicated above.

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