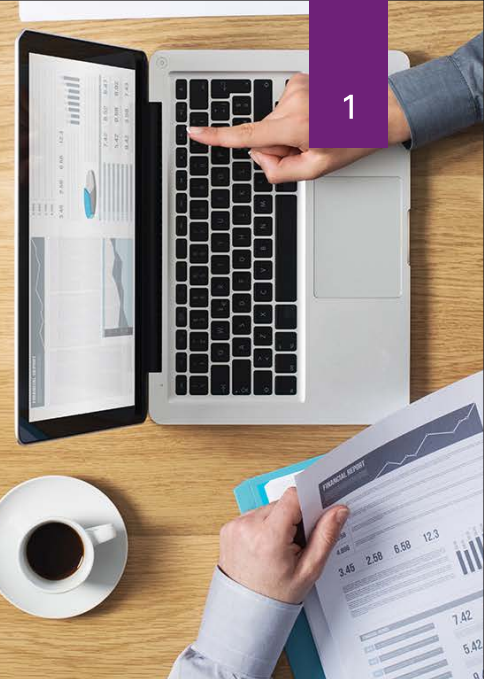




Newsflash

Tax and Legal

Special Issue – CFC



Controlled Foreign Companies

Following the recommendations of the Organisation for Economic Cooperation and Development (OECD), the new Tax Code enhanced and detailed the procedure for taxation of foreign companies controlled by Kazakhstan residents. For these purposes, the Tax Code introduced definitions of a controlled foreign company (hereinafter, the “CFC”), CFC’s permanent establishment (hereinafter, the “CFC PE”), direct, indirect and constructive control or possession, immediate family members, and effective income tax rate.

CFC is a non-resident legal entity or another organisational form of entrepreneurial activities abroad meeting simultaneously the following conditions:

- A Kazakhstan resident owns directly, indirectly or constructively 25 or more percent of a participation stake (voting shares) of the CFC or the CFC is controlled¹ by a Kazakhstan resident;
- The CFC or the CFC PE is registered² in a tax haven or the effective income tax rate for the CFC or the CFC PE is less than 10 percent.

The list of tax havens is approved by the state authorities.

The Tax Code defines the effective income tax rate for the CFC or the CFC PE as an arithmetic mean of the CFC or the CFC PE effective income tax rates for the three preceding periods including the reporting period. If during the three preceding periods, including the reporting period, the CFC or the CFC PE had accounting losses or nil profits, these figures are not accounted for the calculation of the effective tax rate.

The effective income tax rate for a period is determined as the lowest of:

- the ratio of the current income tax expense (less deferred taxes) to the book profit before tax for the reporting period;

- the ratio of the income tax paid in a foreign country to the book profit before tax for the reporting period.

A portion of profit of the CFC or the CFC PE that corresponds to a participation/control share of a Kazakhstan resident is subject to income tax in Kazakhstan. If a Kazakhstan resident is in loss position, the related portion of the CFC or the CFC PE’s profit reduces the resident’s net operating losses. An excess of the CFC or CFC PE’s profit over the resident’s net operating losses is taxable to the resident in Kazakhstan.

If the duration or beginning/ending dates of a reporting period in a foreign state differ from that in Kazakhstan, the CFC or the CFC PE income taxable in Kazakhstan is subject to adjustment.

A failure to declare or an understatement of the CFC or the CFC PE taxable income in Kazakhstan are subject to administrative penalties. The Tax Code also stipulates provisions under which the administrative and interest penalties do not apply to a Kazakhstan resident if the resident is not able to obtain necessary information to assess the Kazakhstan tax liabilities related to the CFC or the CFC PE in time.

The CFC or the CFC PE income is not subject to double taxation. To avoid the double taxation, a Kazakhstan tax resident may:

- decrease the CFC or the CFC PE income taxable in Kazakhstan;
- apply established tax exemptions;
- credit income tax paid abroad against the Kazakhstan income tax liabilities;
- deduct corporate income tax paid in Kazakhstan.

¹ “Control” is defined under the International Financial Reporting Standards or another internationally recognized standards for the preparation of financial statements accepted by stock exchanges

² The Tax Code stipulates that a CFC or the CFC PE is considered as registered in a tax haven, if the CFC or the CFC PE foundation documents or the CFC’s participant responsible for accounting of income and expenses or asset management of the CFC or the CFC PE is registered in the tax haven

Income Decrease

A Kazakhstan resident may decrease the CFC or the CFC PE book income by the following amounts (if the supporting documents are available):

- Profit (loss) of subsidiaries (associates/joint ventures) recognised on the CFC consolidated financial statements;³
- Income from sources in Kazakhstan taxed in Kazakhstan at the 20 percent tax rate;
- Dividends received from sources in Kazakhstan;
- Dividends received from the resident's other CFCs provided that the dividends are paid from the CFCs profits already taxed in Kazakhstan.

Tax Exemption

The CFC or the CFC PE income is exempt from taxation in Kazakhstan for a Kazakhstan resident:

- If the resident indirectly owns/controls the CFC through another resident;
- If the resident indirectly owns/controls the CFC through an entity that is not a controlled entity;
- If the home country of the CFC taxed the CFC PE at the effective rate of 20 or more percent;
- If the home country of a controlled entity through which the resident indirectly owns/controls the CFC or the CFC PE taxed the CFC at the effective rate of 20 or more percent;
- If the CFC or the CFC PE registered in a tax haven were subject to income tax at the effective rate of 20 or more percent.³

Tax Credit/Deduction

A Kazakhstan tax resident may credit foreign income tax that the CFC or the CFC PE paid in the home country at the effective income tax rate of less than 20 percent against its corporate income tax liabilities in Kazakhstan under procedures established in Kazakhstan tax legislation. If the CFC book income includes Kazakh-source income taxed in Kazakhstan at the rate of less than 20 percent, the resident may reduce its corporate income tax liabilities by the amount of the paid tax under Article 302 of the Tax Code.

Statement on Participation/Control of a CFC

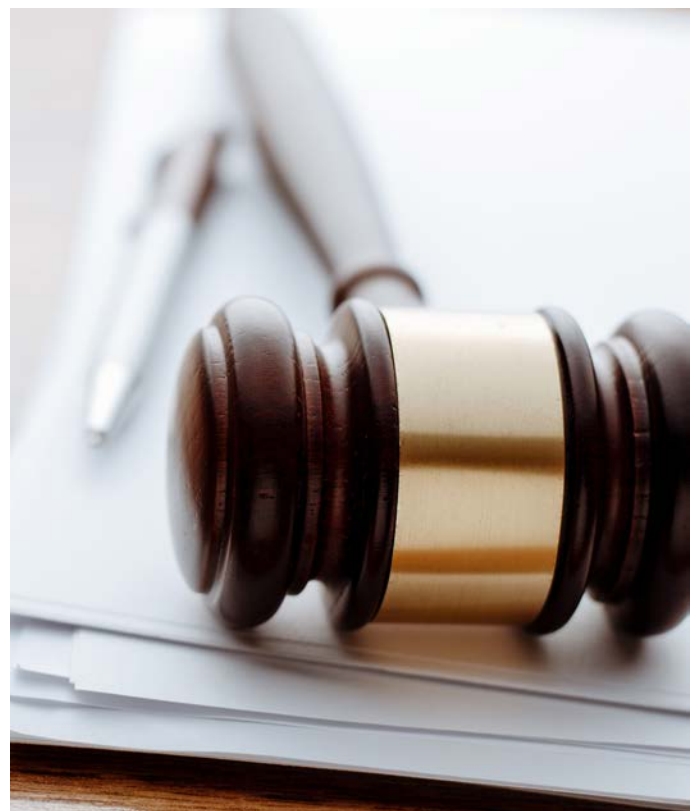
A Kazakhstan tax resident is required to submit to the state revenue authorities a statement on participation (control) of a CFC (the "Statement") within 60 business days after:

- An acquisition of 25 or more percent interest or control in the CFC whether directly, indirectly or constructively;
- An establishment (incorporation) of the CFC;
- A change in a participation or a control stake in the CFC;
- A cessation of holding of 25 or more percent of a participation or a control stake in the CFC;
- A liquidation of the CFC.

A Kazakhstan resident having held a participation or a control stake in the CFC by 1 January 2018 is required to submit the Statement by 31 December 2018. In the subsequent tax periods, the Statement is due by 31 March of the year following the reporting tax period. A form of the Statement is to be approved by the state revenue authorities. If a Kazakhstan tax resident finds mistakes in the submitted Statement, the resident may submit to the tax authorities an adjusted Statement with the correct information.

If the tax authorities find that a resident holding an interest stake or constructive control in a CFC failed to submit the Statement in time, the tax authorities will notify the resident of the violation. If the resident agrees with the tax authorities notice, the resident is required to submit the Statement to the relevant tax authorities within the prescribed period. Otherwise, the resident is required to provide the tax authorities with explanations and documentation supporting the resident's position or to file a complaint against the actions (omissions) of the tax officials.

³ If the CFC's home country legislative acts state to report the subsidiaries (associates/joint ventures) financial information on the consolidated financial statements without stand-alone financial statements.



Contacts



Rustem Sadykov
Partner,
Head of Tax and Legal
KPMG in Kazakhstan and Central Asia
T: +7 (7172) 55 28 88
E: rsadykov@kpmg.kz



Inna Alkhimova
Partner,
Tax and Legal
T: +7 (727) 298 08 98
E: ialkhimova@kpmg.kz

www.kpmg.kz



kpmg.com/app



KPMG maintains a database of subscribers, event attendees and business-related contacts. The information we maintain on you contains your business contact details, as well as the track record of our interactions with you. In managing this database, we take our obligations about confidentiality and maintenance very seriously. We do not share personal information with unaffiliated third parties. Should you require your information to be updated, amended or deleted from our records please contact us at company@kpmg.kz outlining your requirements.

Legal services may not be offered to SEC registrant audit clients or where otherwise prohibited by law.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2018 KPMG Tax and Advisory LLC, a company incorporated under the Laws of the Republic of Kazakhstan, and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.