

Tax alert

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In this alert, we would like to discuss clarifications from the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan (“State Revenue Committee”) on letters from members of the Kazakhstan Association of Taxpayers (“KAT”) regarding the period of certificates of residence issued by United Kingdom authorities, and head company financing of representative offices.

Period of validity for certificates of residence

On 12 April 2015, KAT members sent letter # 727-04/15 to the State Revenue Committee requesting clarification on the period of validity of certificates of residence issued by HMRC as confirmation of residency of the United Kingdom.

On 18 March 2014, the Kazakhstan and UK competent authorities signed an agreement of mutual understanding whereby Kazakhstan would accept certificates of residence issued by HMRC as confirmation of residency in the United Kingdom for tax treaty purposes **for the period indicated in the certificate only.**

If an HRMC certificate of residence **does not specify a residency period or date, Kazakhstan accepts the certificate as confirmation of residency in the United Kingdom for the calendar year in which it was issued.**

According to State Revenue Committee explanations, if a certificate of residence issued by the United Kingdom tax authorities confirms residency **as at a specific date, tax agents are entitled to apply an international treaty from 1 January of the calendar year until the date in question.**

For example, if a certificate of residence is issued on 16 December 2013 and confirms residency as at 16 December 2013, then the certificate can be applied for the period from 1 January 2013 until 16 December 2013.

Head office financing of representative offices

On 12 April 2015, KAT members sent letter #728-04/15 to the State Revenue Committee requesting clarification on the taxation of amounts sent by foreign companies to finance the activities of their representative offices in Kazakhstan.

KAT believes that head office financing of its representative offices should not be treated as the taxable income of those representative offices for the following reasons:

- cash flows within one legal entity cannot, by definition, be treated as a taxable event.
- Kazakhstan tax law contains no provisions allowing representative office financing by a head office (i.e. cash flows within one and the same legal entity) to be treated as taxable income.
- the position whereby representative office financing by a head office is taxed contradicts Kazakhstan tax and accounting rules.
- the position whereby representative office financing is taxed contradicts double taxation treaties to which Kazakhstan is a party.
- the reasoning behind taxing representative office financing contradicts previous tax authority clarifications.

Despite the above arguments, the tax authorities believe that foreign company representative offices should submit an income tax return and treat financing as income in the ‘other income’ section.

If financing exceeds deductions, representative offices should assess income tax file an application for a refund.

At the same time, the tax authorities do not refer to the specific provision of legislation stipulating that financing should be treated as the income of representative offices.

Contacts

Should you have any questions about the information in this issue of our Tax Alert or any other questions regarding business operations in Kazakhstan, please do not hesitate to contact any of our team members.

Almaty/Astana

Vladimir Kononenko

Phone.: +7(727) 258 13 40

Fax: +7(727) 258 13 41

Email: vkononenko@deloitte.kz

Dilya Osmanova

Phone.: +7(727) 258 13 40

Fax: +7(727) 258 13 41

Email: dosmanova@deloitte.kz

Almaty Financial District,
36 Al Farabi Av. Bldg.B
Phone.: +7(727) 258 13 40
Fax: +7(727) 258 13 41

Atyrau/Aktau

Antony Mahon

Phone.: +7(727) 258 13 40

Fax: +7(727) 258 13 41

Email: anmahon@deloitte.kz

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