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Global Tax Alert

Cyprus-Kazakhstan double tax treaty enters into force

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Executive summary

On 17 January 2020, the Cyprus-Kazakhstan double tax treaty (the Treaty) entered into force, with the application of its provisions starting on 1 January 2021. This follows the vote for approval of the Treaty by the Kazakh Parliament and the signature of the ratification law on 30 December 2019 by the Kazakh President. Cyprus ratified the Treaty on 24 May 2019. With this Treaty, Cyprus has further expanded its treaty network and has strengthened its position as an investment hub for the Eurasian region.

This Alert summarizes the main features of the Treaty.

Detailed discussion

Permanent establishment

- Article 5 of the Treaty contains a definition of permanent establishment (PE) used to determine the threshold for taxation of business profits in the source state. The wording of this article is largely in line with the wording of the 2017 Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income, except for the "service PE" provisions discussed below.

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- In particular, the relevant article provides that a building site, construction, assembly or installation project in connection therewith will constitute a PE if such arrangement lasts for a period of more than 6 months within any 12-month period.
- The provisions relating to "service PE" follow the United Nations Model Tax Convention definition. A "service PE" arises where services, including consultancy services, are furnished in the one Contracting State by a resident of the other Contracting State through employees or other personnel engaged by the resident for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 183 days within any 12-month period.

Dividends

- The Treaty provides for withholding taxes on dividends as follows:
  - There is a 5% withholding tax if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.
  - The withholding tax is 15% in all other cases.

Interest

- The Treaty provides for a 10% withholding tax on interest payments, provided that the recipient is the beneficial owner of such interest.
- No withholding tax should apply on interest payments where the beneficial owner of the interest is the Government of the other Contracting State a political subdivision, a central or local authority, the Central Bank or any other financial institution wholly owned by the Government of the other Contracting State.

Royalties

- The Treaty provides for a 10% withholding tax on royalty payments, provided that the recipient is the beneficial owner of such royalties.

Capital gains

- Under the Treaty, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests in the capital of a company deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other Contracting State.
- The above does not apply to gains derived from alienation of shares listed on an approved stock exchange.

Other considerations

- Article 21 of the Treaty addresses the taxation of offshore activities. It provides that any enterprise of a Contracting State that carries on offshore activities in the other Contracting State shall be deemed to have a PE in that other Contracting State. This shall not apply where the offshore activities are carried on in the other Contracting State for a period or periods not exceeding in the aggregate 30 days in any 12-month period beginning or ending in the fiscal year concerned.
- Also under Article 21, gains derived by an enterprise of a Contracting State from the alienation of one of the following may be taxed in that other State:

  a) Exploration or exploitation rights

  b) Movable property situated in the other Contracting State and used in connection with offshore activities, carried on in that other State

  c) Shares or comparable interest deriving their value or the greater part of their value directly or indirectly from such rights or such property or from such rights and such property taken together
- Article 22 of the Treaty provides that any income not addressed specifically in any other article of the Treaty should be taxed only in the state of residence of the recipient of income.
- Article 6 of the Treaty provides that any income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State. In addition, the term immovable property includes rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.
- Article 26 of the Treaty includes a provision on the exchange of information between competent authorities of the Contracting States and the wording of this article is in line with the wording of the OECD Model Tax Convention on Income 2017. The Protocol to the Treaty provides a list of the information that needs to be provided by a Contracting State when making a request for information under Article 26.

- Article 29 of the Treaty includes essentially a principal purpose test benefit whereby a benefit under the Treaty shall not been granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the objective and purpose of the relevant provisions of the Treaty.

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