

No. Fact Action

On 12 December 2023, the President signed Decree No.45-VIII 3PK on introduction of amendments to the Tax Code, including Articles 264 and 288

- In accordance with these amendments, effective from 1 January 2023 (i.e., through retrospective enforcement), 3% CIT deductibility limitation should apply only to transactions with suppliers located in jurisdictions included into the list of states with preferential taxation.
- Review if intragroup services are purchased from non-resident legal entities with jurisdictions included into the list of states with preferential taxation.
- Taxpayers should consider the changes when calculating 2023 CIT advance payments.

•

Cash-flow and ETR impact

Introduction of a New Tax Code in 2025

The proposed key changes to the New Tax Code are, inter alia, the following:

- Introduction of different CIT rates depending on the sector of economy (CIT rates increase for Oil & Gas and banking sectors 30% instead of current 20%)
- Value-added tax (VAT) rate increase from 12% to 16%
- Reduction from 10 to 5 years of period for tax loss carry forward
- Introduction of a progressive Personal Income Tax rates for incomes over certain threshold, i.e., standard rate 10% and increased one 15%
- Re-consideration (reduction) of tax incentives to increase their efficiency
- Reconsideration of tax base for transport, land, property taxes and introduction of a "luxury tax"
- ► Methodological council on interpretation of controversial tax position

 Analyze potential impact on taxpayers upon proposed changes are formalized into a law.

Compliance

Risk management

Jan Feb Mar Apr

No. **Fact Action**

Recent practice and trends of the tax authorities:

- Reclassification of service fees into royalties for withholding tax (WHT) purposes Management, consulting, marketing, IT support and other intragroup services are reclassified into royalties subject to 15% domestic (generally up to 10% under double tax treaty) WHT instead of 0% WHT on service fees under double tax treaty (DTT).
- Be ready to confirm that services were indeed provided and benefited the buyer.
- To collect duly executed supporting documents related to provision of services, have available transfer pricing (TP) documentation.
- ► To prepare a 'defense file' to support Kazakhstan taxpayers' positions. 'Defense file' usually contains the following information: i) description of taxpayers' business and services under the agreement, ii) details on provided services, iii) benefits for taxpayers and other information.



CIT deductibility of intragroup charges

The tax authorities challenge reasonability of services and goods acquired by a taxpayer from non-resident related parties (several cases won by taxpayers with EY Kazakhstan Controversy team's support).

- To confirm actual provision of services, to carry out a benefit test.
- To be in compliance with Kazakhstan TP legislation.
- ► To collect duly executed supporting documents related to provision of services.
- ► To prepare a 'defense file' to support taxpayers' positions.



Permanent Establishment (PE) in Kazakhstan

DTT benefits are hard to apply if a non-resident has registered PE in Kazakhstan (case won by taxpayers with EY Kazakhstan Controversy team's support).

- ► To check whether recipient of the income (i.e., non-resident) has a registered PE in Kazakhstan.
- In case of presence of a registered PE in Kazakhstan, to prepare a 'defense file' confirming that income is not attributed to the PE.





The tax authorities reject application of reduced WHT rates under DTTs on passive types of income if the recipient is not proved to be beneficial owner of that income (15% WHT instead of 5 or 10%).

To check whether recipient of the income (i.e., non-resident) is a beneficial owner of such income and not an agent or intermediary. That can be proven, inter alia, by checking (i) bookkeeping records of the non-resident, (ii) tax reporting of the non-resident to ensure that such income was included in taxable base of such non-resident and (iii) other tests.

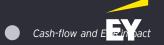


Reliability of suppliers and fictitious transactions

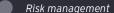
The tax authorities often make additional assessments for CIT and VAT by deeming the supplies of goods, works, and services as fictitious and the supporting documents as fraudulent, i.e.:

- If supplier lacks fixed assets and employees,
- If supplier did not pay taxes,
- If supplier is absent at the place of registration, deregistered for VAT purposes or declared bankrupt.
- ► To improve control process on suppliers on new and current suppliers (e.g., to participate in pilot project on due diligence).
- To check the reliability of suppliers through open government sources (e.g., website of the tax authorities, statistical agency, check in the court database, request letters of recommendation,
- To include liability clause in contracts with suppliers.









3

Contacts:

Roman Yurtayev Partner Ernst & Young Kazakhstan LLP roman.yurtayev@kz.ey.com Svetlana Ceban Partner Ernst & Young Kazakhstan LLP svetlana.ceban@kz.ey.com Aliya Batyrbekova Senior Manager Ernst & Young Kazakhstan LLP aliya.batyrbekova@kz.ey.com Leila Kozeibayeva Manager Ernst & Young Kazakhstan LLP leila.kozeibayeva@kz.ey.com



EY | Building a better working world

EY exists to build a better working world, helping create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws.

For more information about our organization, please visit ey.com. © 2024 EYGM Limited. All Rights Reserved. EYG no. 000012-24Gbl ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal, or other professional advice. Please refer to your advisors for specific advice.

ey.com

