

- The assets of a subsoil user account for less than 50% of the value of the assets of the entity paying dividends.

The exemption applies both to the individual and legal entity partners of an LLP. If the above conditions have not been met, then income tax rates may be reduced under a double-taxation treaty if a non-resident is the end recipient of income and a resident of a country with which Kazakhstan has entered into a treaty. To apply treaty provisions, the recipient of dividends should provide the entity paying the dividends with a duly prepared tax residence certificate. If an LLP in Kazakhstan pays dividends to a partner registered in a country with concessional taxation, the above mentioned exemption is not applied. The withholding tax rate in such a case is 20%. This rate cannot be reduced by a treaty since Kazakhstan does not sign any treaties with offshore.

BRANCH VS. LLP

If we compare an LLP with a branch, an LLP founder receives dividends, and in the case of a branch the founder may at any time make use of the branch's funds as the branch and head office are one and the same entity. If the above conditions are met, dividends will be exempt. However, no BPT exemptions exist for branches, which puts the branch in a worse position compared to the LLP in terms of taxation. Moreover, BPT is paid annually, irrespective of whether the head office has used branch funds or not. Withholding tax on dividends is only paid if dividends are paid. A major plus that a branch has is the freedom to move funds in terms of currency control and the ability to conclude transactions in foreign currencies.

TREATIES

Kazakhstan has entered into a relatively large number of double-taxation treaties. The current number is 45. Treaties help avoid double taxation either through an exemption or a tax offset. Consequently, opening an LLP or branch of an entity registered in a country with which Kazakhstan already has a treaty creates a number of advantages.

COUNTRIES WITH CONCESSIONAL TAXATION (OFFSHORE COUNTRIES)

Kazakhstan's attitude to countries with concessional taxation is relatively strict. All income payable from Kazakhstani companies/entities to any such country is subject to a 20% withholding tax at the source (except income from sale of goods). Above, we provide an example of the taxation of dividends payable to a country with concessional taxation. Likewise, transactions between Kazakhstan companies and companies registered in countries with concessional taxation are subject to strict banking and currency controls. Due to the above, working with countries with concessional taxation is not

the most effective way of opening a company or structuring transactions.

CFC RULES

Another aspect that needs to be kept in mind when doing business in Kazakhstan is CFC rules. If an LLP in Kazakhstan holds 10% or more of a company registered in a country with concessional taxation, then according to the rules, its profit should be included in the LLP's AAI in proportion to its interest in the company. Under Kazakhstani law, total profit should be supported by the non-resident in question's financial statements. The rules were introduced into Kazakhstan law to prevent tax evasion through offshore companies.

ADMINISTRATION

An important element of any business is knowledge of legal administration, that is, how tax audits are carried out and how to appeal. In this section we take a brief look at the basic aspects of legal administration, in particular tax audit types and dispute procedures. Tax audits are divided into two types: scheduled and unscheduled. Scheduled audits are then divided into comprehensive and issue-related audits, according to tax audit plans. Audit plans are drafted once every half-year based on a risk assessment and management system and are approved by the authorities. In turn, unscheduled tax audits are carried out based on:

- Valid resolutions of the authorized body
- Procedures stipulated by criminal procedural law

Once an audit has been completed, an audit act is drawn up and notification is issued. If a taxpayer does not agree with the actions and/or notification of the tax authorities, it may appeal such actions and/or notification with a higher tax body, or in court.

CONCLUSIONS

Taxes are an integral part of any state, and consequently, knowledge of taxation rules and an ability to navigate the relevant law is a very important aspect for any business. All the comments made in this article are based on Kazakhstani law valid at the time the article was written. In this article, we have tried to shed light on the key aspects of Kazakhstan law that foreign investors need to consider when opening a business in Kazakhstan. Of course, it must be remembered that each and every case requires a detailed review of the specific situation, which involves studying associated documents, the provisions of treaties between Kazakhstan and other countries, market conditions, and the specific nature of each transaction.

If required, we can provide consultation on how to open and manage a business in Kazakhstan. Please send any questions you may have by email to: vk@anadv.kz.

TRANSFER PRICING

The term "transfer pricing" is well known in Kazakhstan. Transfer pricing issues are regulated by the Transfer Pricing Law, which allows the authorities to monitor international business operations, such as the export or import of goods, the provision of services to non-residents, or the purchase of services from non-residents. The law also applies to certain transactions concluded in Kazakhstan if they are related to international business operations, such as:

- Transactions with mineral resources for sale
- Transactions where one of the parties is entitled to tax privileges
- Transactions where one of the parties has incurred a loss according to tax declarations for the two tax periods preceding the year the transaction was concluded

The main feature of the Law is that a transfer price is not only that between related parties, but also a price formed between unrelated parties if it differs from the market price. Consequently, both prices between related parties and independent companies are subject to controls. Not only does the law allow transactions to be monitored, but it also requires those being monitored to file reporting with the tax authorities. This requirement covers the transactions of specific large taxpayers to purchase raw materials and provide certain services. Any taxpayers not specifically being monitored are obliged to keep all documents justifying prices used, and at the request of the authorized bodies, be able to provide them within 90 calendar days.

The tax authorities pay great attention to transfer pricing issues, and if they can prove that taxpayers do not have sufficient supporting documentation for prices used, or that prices used are not market prices, the risk of fines and additional taxation is greatly increased.