



# NewsFlash

## Tax and Legal

December 2020



Dear readers,

**The President signed a law on amendments to tax legislation of Kazakhstan (hereinafter, the "Law").<sup>1</sup> In this NewsFlash issue, we offer you an overview of changes that the Law introduces with respect to taxation of nonresidents.**

### General Provisions

To ensure the availability of information on beneficial owners for further exchange with foreign states, the Law expands the list of information that second-tier banks and other financial institutions provide to the state revenue authorities. *(Effective date - 1 January 2021)*

The Law permits nonresidents to apply for mutual approval procedures to the Kazakh tax authorities. *(Effective date - 1 January 2021)*

### Transfers of Assets within a Group of Companies

The Law introduces mechanisms for a transfer of assets within a group of companies without tax consequences. In particular:

- The amendments establish a separate procedure for the determination of an asset's initial cost when a nonresident entity transfers the assets to the Kazakh recipient within a group of one owner for the purpose of returning the capital to Kazakhstan. The initial cost of the asset is based on the historical costs that the nonresident has incurred to acquire the assets. It is supposed that the Kazakh company would refer to this initial cost in a subsequent sale of the asset. *(Effective date 1 January 2020)*
- Dividends originated from a transfer of assets from a foreign holding company to a Kazakh entity within a group of one owner are not recognized as taxable income to the ultimate shareholder. *(Effective date 1 January 2020)*

- The calculation of the three-year period of shares or ownership stakes (for the purpose of tax exemption of dividends) is not interrupted when the ownership transfers between companies belonging to the same persons. *(Effective date 1 January 2019)*

### Application of Tax Treaties

The Law restricts an automatic application of the tax treaties provisions for full exemption of income payable to related parties. For income payable to residents of MLI<sup>2</sup> signatory countries the full exemption provisions would apply if all of the following conditions are met:

- The income is taxable in the nonresident's country of residence with no exemption or refund in the reporting and/or subsequent periods;
- The applicable tax rate equals or exceeds 15 percent. *(Effective date 1 January 2021)*

The amendments specify that the tax treaty relief of dividends, interest and/or royalties is subject to the terms of the treaty. The purpose of the amendment is to clarify that the tax treaty relief should not apply if dividends, interest or royalties relate to a Kazakh permanent establishment of a nonresident recipient of such dividends, interests or royalties. *(Effective date 1 January 2021)*

<sup>1</sup>Law No. 382-VI of the Republic of Kazakhstan On Amendments and Addenda to the Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the State (the Tax Code) and Law of the Republic of Kazakhstan On the Introduction of the Code of the Republic of Kazakhstan On Taxes and Other Obligatory Payments to the State (the Tax Code), dated 10 December 2020

<sup>2</sup>The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (hereinafter, the "MLI")

The amendments extend the list of cases when the tax authorities refuse to consider a nonresident's tax refund application by adding a case of a re-submission of the application for the previously audited period, if the audit resulted in the refusal to refund the income tax because:

- the nonresident's activities in Kazakhstan are recognized as a permanent establishment;
- the Kazakh tax agent remitted to the state the tax related to the nonresident's income from Kazakh sources at its own expenses;

*(Effective date 1 January 2021)*

### Requirements to Residency Certificates

The Law specifies that if a tax residency certificate verifies the tax residence of a nonresident in a foreign country on a specific date, the nonresident is regarded as a resident of that state for the period from the beginning of the year to the date on which the residence is confirmed. *(Effective date 1 January 2021)*

Instead of providing a hard copy of the legalized residency certificate, a taxpayer may refer to the document legalizing the signature and seal on the residency certificate that is placed on:

- the website of the state authorities performing the legalization;
- Internet resource of a state organization or a public notary chamber collecting (storing) electronic apostilles of a foreign state.

*(Effective date 1 January 2019)*

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