Focus on substance requirements and transparency

Substance and Transparency

Globally, but in particular in the more developed countries, governments and the tax authorities are extremely focused on the business substance behind tax structures and transfer pricing. This is a part of an OECD led project widely referred to as the BEPS (base erosion and profit shifting) initiative. In other words, commercial and tax arrangements need to be very closely aligned. For example, the Dutch Authorities recently issued a Decree, which specifies requirements for companies to be considered as residents of the Netherlands. These requirements are presented below for those who are interested.

Related to this, the trend in the tax world is for far greater transparency. Groups are undertaking planning under the assumption that the tax authorities will have full knowledge of their structure / transfer pricing arrangements, so they need to be defensible.

The impact in Kazakhstan

It is naive to think that these issues are not relevant for Kazakhstan. Substance is essential for all tax planning. In particular we recommend Kazakhstan companies which are part of international holding structures, review their structures in light of the BEPS initiative and pay particular attention to the following:

- ensure that holding and finance structures have commercial (non-tax) logic;
- ensure that structures are backed up with substance;
- consider whether rulings (e.g. in the Netherlands) are valid.

Prevention is much easier (and cheaper) than cure, so now is the time to take a fresh look at structures and transfer pricing arrangements.

Substance requirements: Dutch example

The new requirements for companies to be considered residents of the Netherlands:

1. Not less than 50% of the decision-making board members should be residents of the Netherlands. Board decisions should be made in the Netherlands;
2. The company should have sufficiently qualified staff;
3. Bookkeeping should be performed in the Netherlands;
4. The main bank accounts should be in the Netherlands;
5. The company should ensure compliance with Dutch tax legislation;
6. The company should not be considered a tax resident of any other state;
7. The company should maintain a level of equity in consistent with its functions.

If your structure includes a Netherlands entity bear in mind that:

- the Dutch tax authorities may refuse to issue tax rulings for the company;
- the Dutch tax authorities may refuse to recognize the residency of the company, and refuse to issue tax residency certificates necessary for application of a double tax treaty.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Tax and Legal Services

Michael Ahern, *Partner*
michael.ahern@kz.pwc.com

Elena Kaeva, *Partner*
elena.kaeva@kz.pwc.com

Timur Zhursunov, *Partner*
timur.zhursunov@kz.pwc.com

Richard Bregonje, *Partner*
richard.bregonje@kz.pwc.com

Walter Daniel, *Director*
walter.daniel@kz.pwc.com

Omon Tursunov, *Director*
omon.x.tursunov@kz.pwc.com

PwC Kazakhstan

34 Al-Farabi Ave.
Building A, 4th floor
Almaty, Kazakhstan, 050059
Tel : +7 (727) 330-3200
Fax : +7 (727) 244-6868
www.pwc.kz

6 Sary-Arka Street
Business Centre "Arman", 16th floor
Astana, Kazakhstan, 010000
T: +7 (7172) 55-07-07
F: +7 (7172) 55-07-08
www.pwc. kz