

Case: Flaws and defects in tax residence certificate

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Situation

A Kazakhstani engineering company had taken seismic measurements of a field in Canada. Canadian company was attracted for data decrypting. The work was done outside of Kazakhstan and did not need permanent establishment in Kazakhstan. Company's finance department knew that it is possible to apply the tax convention concluded between Kazakhstan and Canada, according to which the revenues exemption was provided by Canadian company, as such income was already taxed in Canada. For this purpose, Kazakhstani company had requested residence certificate from the Canadian contractor. The contractor provided a certificate. No one rechecked the tax residence certificate.

After completion of the contract, six months later, tax inspection was carried out. Inspectors charged additional tax withheld from payment source of non-resident income and a fine about 50% of the amount of withheld tax. The reason for additional charge was a violation of international agreement application procedure. As it turned out, according to the Tax Code of Kazakhstan, residence certificate confirming the tax residency must be issued by competent authority of non-resident's country. Also, it must be an original or notarized copy with competent authority's signature and official seal.

It is important to have the signature and seal legalized. In other cases, if the country is a member of Hague convention that provides legalization streamlined proceedings by special stamp-apostille, certificate must be with apostille. As Canada is not a member of Hague convention, it is necessary to have legalized signature and seal. As it was found, the original certificate included wrongly authenticated signature and seal of a notary, but not of a competent authority (Agence de Revenu de Canada). In this respect, the tax authority did not accept the certificate residence for the use of privileges and tax exemptions provided by the Tax Code of Kazakhstan. Since the certificate was rejected the tax authority, the local company was not entitled to apply the exemption: tax was additional charged, withheld at the payment source with the penalty and the imposition of an administrative fine.

In another case, a non-resident provided British company a copy of residence certificate issued in 2011. However, tax inspectors discovered that apostille was put in 2012, although the document was released in 2011. As the income payment to a non-resident was carried out in 2011, the tax agent was required to have executed certificate in stock before the end of 2011. The inspectors rejected residence certificate and charged additional tax from the payment resource.

How to avoid such defects?

Solution:

In such cases, it is necessary:

- to define if there is withhold tax on the deal with a non-resident at a source of payment and VAT for non-resident;
- to determine the possibility of using international treaty providing tax exemption or reduced tax rate application;
- to follow the international treaty application procedure for the application of tax exemptions and privileges withheld at payment source;
- to examine the document, confirming tax residency, for its application on tax purposes in Kazakhstan in order to reduce risks.
- check small errors availability, miscalculations and other defects in design of tax residence certificate.