

Article: Factors affecting the formation of permanent establishment in Kazakhstan

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Factors affecting the formation of permanent establishment in Kazakhstan

Foreign companies often enter into contracts with Kazakhstani companies to provide services, works in the territory of the Republic of Kazakhstan and abroad. It is due to the number of economic reasons, such as lack of the skilled services in Kazakhstan. Activities of foreign companies in doing business in the Republic of Kazakhstan usually requires opening a branch or LLP to ensure that a foreign company could carry out a business transaction. However, a foreign company can provide services without opening a branch or representative office.

From the points of view of taxation of foreign companies are regarded as non-residents operating activities in Kazakhstan:

- through a permanent establishment;
- without a permanent establishment.

The concept of ~~xxxxxxxxxx~~ establishment ~~xxx~~ is defined by the tax legislation as the term, includes any place of business through which the non-resident may engage in business activities: storage, workshop, building site and others. For example, a foreign auditing company enters into contracts with local companies, has the office in Kazakhstan, a permanent establishment, which will be carried out through business operations. From the theoretical point of view we can say that the term ~~xxxxxxxxxx~~ establishment ~~xxxxxx~~ this is the category used by the legislation of the country, which gives some kind of form for territory of the country functioning in order to determine the special order of taxation of non-residents. The concept of ~~xxxxxxxxxx~~ establishment ~~xxxxx~~ a form of the recognition, if the company carries on business in the territory of Republic of Kazakhstan, in fact, or activity does not constitute a permanent establishment.

Non-residents in Republic of Kazakhstan, forming a permanent establishment (PE) is treated for the tax purposes as local companies to pay CIT (corporate income tax), VAT (in case of exceeding the specified minimum turnover) and other taxes, depending on the occurrence of the objects of taxation. For example, a registered Branch of a Foreign Company in Kazakhstan will be treated for the tax purposes as a non-resident with the formation of PE in Kazakhstan. This branch will pay CIT, VAT and other taxes just as if it were a Kazakh LLP, JSC, which is resident. In other words, generally, non-residents and residents are equal to the subject in the same way as residents.

In this article we will focus on the factors influencing the formation of PE in the Republic of Kazakhstan and the features that should be considered. For a clear understanding, let's take an example.

LLP, to provide design services, enters into a contract with the Italian company for the development of landscape design. The Italian company has not representative offices in Kazakhstan, the branch or subsidiary and in no way presents in Kazakhstan. Such a company will be recognized as a non-resident and does not constitute a permanent establishment in the Republic of Kazakhstan. For instance, other case - the

French pharmaceutical company has a representative office in Kazakhstan. Such a company for tax purposes will also be considered as a non-resident and does not constitute a permanent establishment in the Republic of Kazakhstan.

For such non-residents that do not form PE, Kazakhstan legislation provides other tax regime under which non-resident does not pay CIT and VAT. The Italian company, as well as the French pharmaceutical company, will not pay VAT and CIT stand only difference is that the representation of the French company will pay payroll taxes and other taxes (property, land, etc.), other than income taxes (CIT and a tax on the net income of a permanent establishment), because the office carries out representative functions and business activity is not engaged (income due to meet demand and at their own risk).

If the branch will begin to engage directly or indirectly in entrepreneurial activity, that is, to make a profit, then such representation is automatically recognized as a non-resident, forming a PE in the Republic of Kazakhstan and, accordingly, pays CIT and VAT. For example, if the representative office of the French company will deliver drugs and start their implementation, such a company will already be considered as a non-resident and will form PE in Kazakhstan. In this regard, it is important to consider the factors that influence the occurrence of PE.

Factors affecting the existence/formation of permanent establishment in Kazakhstan

It is very important for representative companies not to be involved in business projects. In practice, very often foreign companies open a representative office in Kazakhstan in order to avoid paying taxes as much as possible in Kazakhstan, but in the future indirectly involve representation in business projects, resulting in the representation of credit additionally CIT and VAT.

For example, an Israeli engineering company (non-resident, is located outside the Republic of Kazakhstan) enters into a contract with a local company to conduct a technical audit on the territory of Kazakhstan. Since the Israeli company recognized a non-resident without the formation of PU, the Kazakh company, in theory, should apply the so-called withholding tax (withholding tax) at the rate of 15%. That is, with the payment of a non-resident company holds a local withholding tax. Given that fact, the Israeli company may be taxed twice, at home and in Kazakhstan, the local company will use the Convention on the avoidance of double taxation. As a result, the Israeli company will be taxed only at home, in the Republic of Kazakhstan applicable exemption.

However, in the provision of engineering services aforementioned Israeli company resources involved a representative office in Kazakhstan, has involved its staff in the provision of works / services; Moreover, acceptance certificate signed by the mission itself. During the tax inspection found that the office was involved in the provision of services in the territory of the Republic of Kazakhstan through a hired their staff, and, accordingly, such activities are non-resident PU formed in Kazakhstan. This office was obliged to pay CIT and VAT. 8 result representation credit additionally taxes, initiate administrative proceedings that could potentially turn into criminal cases. It should be noted that the tax authorities in administrative cases, which resulted in additional taxation on the amount of more than 2 000 MCI (2826 LLC tenge), we are obliged to transfer material financial police affairs, which is obliged to examine the case for a criminal offense under article 222 of the Criminal Code "Evasion from tax and (or) other obligatory payments to the budget from the organizations".

Exceeding the time required for the formation of a permanent establishment