



1. Company against State Revenue Department of Kostanay region

Amount of assessments: about KZT 1.6 billion

Court instance: the Supreme Court

Date: April 2016

Major issues: assessment of payments for use of land plots

Issues:

The tax authorities assessed additional obligations associated with payments for use of land plots due to disagreement with the Company's approach for classification of lands. As per the tax authorities, relevant land plots should be classified as "lands of settlements", while the Company applied lower tax rate envisaged by the Kazakhstan Tax Code for industrial lands located outside of settlements.

The reason for dispute is provisions of land lease agreement and acts on the right of temporary land use.

Based on the position of the Company, the authorised bodies made technical mistakes regarding location of land plots in the course of concluding land lease agreements, while cadastral numbers has not been changed as of the tax audit. To support its position, the Company referred to the decision of the Akim of the Kostanay region, based on which lands leased by the Company were excluded from the city area.

The position of the court:

The Supreme Court supported the position of the Company.

PwC recommendations:

In order to mitigate tax risks we recommend paying special attention to drafting land lease agreements (in particular, to contractual provisions regulating categories of leased land plots).

2. Company against Uralsk State Committee

Amount of assessments: around KZT 258 million

Court instance: the Supreme Court

Date: February 2016

Major issues: discrepancies between book and tax data

Issues:

In the course of the tax audit the tax authorities identified significant discrepancies between the Company's books and tax returns.

As a result, the tax authorities identified significant understatement of the Company's annual aggregate income.

The position of the court:

The Supreme Court supported the position of the tax authorities.

PwC recommendations:

According to the Tax Code, tax accounting should be based on book data. Hence, we recommend paying special attention to preparation of tax registers (in particular, to the detailed explanation of differences arising between accounting and tax data).

Failure of taxpayers to provide explanations between book and tax data may lead to significant tax assessments.

3. Company against State Revenue Department of Almaty, Medey region

Amount of assessments: approximately KZT 0.4 million

Court Instance: the Supreme Court

Date: March 2016

Major issues: Additional assessment of payments for placing outdoor advertising

Issues:

Architecture and Urban Planning Department of Almaty has submitted to the tax authorities photo reports related to outdoor (visual) advertising placed without a permission. According to the photo report, signs with the Company name were posted on the facades of the buildings, where branches of the Companies are located.

On the basis of photo reports, the tax authorities assessed additional payments for the placement of the outdoor (visual) advertising for the period of August - October 2014 and issued a notification for settlement of tax liability.

Position of the Supreme Court:

The Supreme Court supported the position of the Company, pointing out that according to the Law of RK "On Advertising" (as revised on 2014), outdoor advertising does not include among others, signs placed by trading enterprises. The Court concluded that the activity of the Company (sale of jewelry) is a trade activity in accordance with the provisions of the Civil Code of RK, as well as the Law of RK "On regulation of commercial activities".

Thus, the Court arrived at a decision that additional assessment of payments for the placement of outdoor advertising was illegitimate.

PwC recommendations:

Despite the fact that the disputed amount was insignificant, this case is interesting in terms of a significant impact of the careful analysis of other applicable Kazakhstan legislation (aside from the Tax Code) on a positive outcome of a tax dispute.

4. Company against Tax department of Akmola region

Amount of assessments: approximately KZT 3 million

Court Instance: the Supreme Court

Date: March 2016

Major issues: Disallowance of offset VAT

Issues:

The Company purchased rental services related to specialized equipment. Supplier of services issued invoices in line with the requirements of the Tax Code.

However, the tax authorities disallowed offset of input VAT by the Company due to the following: (1) supplier did not report VAT in its tax reporting, (2) criminal investigation was under way on the supplier's false entrepreneurship activity, as well as false bankruptcy, (3) the Company did not present any documents confirming the fact of provision of services (acts of acceptance of leased equipment, waybills, the driver lists).

Further, the service agreement envisaged hourly rent payment, however, the Company failed to provide the documents demonstrating the tracking of hours the equipment was in use, which could have served as the basis for determining the service fees.

The position of the Court:

The Supreme Court supported the position of the tax authorities.

PwC recommendations:

According to the Tax Code, one of the main requirements for VAT offset is connection of purchased services with VATable turnover.

Hence, along with proper invoices, it is recommended that due attention is paid to availability of other supporting documents, demonstrating the fact of provision of services.

5. Company against State Revenue Department of Karaganda region

Amount of assessments: approximately KZT 38 million

Court Instance: the Supreme Court

Date: March 2016

Major issues: Disallowance of consulting services

Issues:

Based on the agreement on provision of information services, the Company deducted significant amounts of expenses for CIT purposes and took credit for corresponding amounts.

According to the tax authorities, the documentation provided by the Company does not show any link / business justification for incurred costs with earned revenues and VATable turnover of the Company.

The position of the Court:

The Supreme Court supported the position of the tax authorities. Based on the position of the Supreme Court, reports and other supporting documents do not disclose the specific nature of the provided services, as these documents do not contain information regarding the volume and purpose of the assignment. The Court pointed out that information reflected in the reports is similar to information that can be obtained with the help of the Google search.

Based on the position of the Court, submitted reports do not contain information providing value in terms of economic performance improvement. In other words, the reports are of informational and educational character only.

The Court also pointed to the list of services contained in the attachments to the agreement (financial information, information on human resources, production management, marketing, sales and logistics, information and legal services), noting that the Company employs director, deputy director, chief engineer, lawyer, chief accountant and other staff, as well as Company possesses testing laboratory of welding, measurement and assembly sites.

The position of the PwC:

Due to lack of sufficient information in respect of the case, we can not express our position regarding the legitimacy of disallowance of consulting services.

Nevertheless, we believe the position of the Supreme Court regarding the availability of information on the Internet is disputable. In particular, the services could cover daily monitoring of information published on the Internet, and summarizing the results in a report.

Also, making a reference to the availability of the Company's relevant staff positions is illegitimate, since, in most cases, consulting services imply support to personnel of the buyer. In other words, it is inappropriate to challenge marketing expenses only on the basis that a taxpayer has marketing staff.

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