



### **1. Company against State Revenue Department of Karaganda region**

**Amount of assessments:** ~ KZT 28 million

**Court instance:** the Supreme Court

**Date:** March 2016

**Subject:** absence of confirmation of actual services delivery

**Facts:**

The Company acquired services from several local providers on mining of sand clay, loading and transportation. The service providers issued VAT invoices and signed acts of acceptance for such services.

The tax authorities challenged CIT deductions related to such expenses and excluded relevant input VAT on the basis that the suppliers were not found at their place of registration. At that, the service providers either did not submit tax returns and calculations for transport, property and payroll taxes, or filed them with nil results. In the tax authorities' view, these circumstances, together with the absence of transportation tickets, indicate the absence of taxable base and employed workforce, and, as a result, impossibility of services delivery.

**The position of the court:**

The Supreme Court supported the position of the tax authorities.

**PwC recommendations:**

The case is interesting due to the court's conclusion that formal compliance with the requirements to the transaction's form, content and participants does not necessarily indicate that such transactions actually took place. The court recognized the transactions as unverified due to absence of primary accounting documents (transportation tickets and tear-off talons).

## 2. Company against State Revenue Department of Mangystau region

**Court instance:** the Supreme Court

**Date:** July 2016

**Subject:** refusal of VAT refund from the state budget

### **Facts:**

The Company registered as a VAT taxpayer in June 2012, and commenced its export operations in July 2012.

In 1Q 2013 the Company submitted a VAT return with a claim for refund of the excess of input VAT over output VAT related to turnovers taxable at 0% for the period of July – December 2012 (approximately KZT 5.9 billion).

The tax authorities refused to refund the excess VAT amounts, arguing that the Company did not comply with permanent export sales definition, based on Article 272.3 of the Tax Code. The tax authorities claimed that permanent export sales should be determined for two periods preceding the periods for which the is filed (i.e. for 1Q and 2Q 2012, when no sales took place).

### **The position of the court:**

The Supreme Court supported the tax authorities' position.

### **PwC recommendations:**

In our view, the court misinterpreted the provisions of the Decree of the Kazakhstan Government No. 373 dated 20 March 2009 with regards to the rules for determining of permanent export sales. According to the Decree, test on permanent export sales should be applied to the two consecutive quarters preceding the quarter, for which the tax return with the claim for VAT refund is submitted.

To ensure correct interpretation of legislation and positive outcome of tax disputes related to VAT refunds, we recommend engaging independent experts specialising in this sphere.

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