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# *Review of the tax authority letters*

*April 2017*

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## *In this issue:*

- ❖ Application of the property, plant and equipment classifier;
  - ❖ Indexation clause in a loan agreement;
  - ❖ VAT offset under joint venture agreement;
  - ❖ RC VAT on acquisition of international transportation services
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### *Application of the property, plant and equipment classifier*

#### Background

Based on Article 117 of the Tax Code, property, plant and equipment ("PP&E") should be placed in fixed asset groups in accordance with the classification established by the authorized state body. Starting from 1 January 2010, taxpayers had been applying the PP&E Classifier ГК PK 12-2009 (the "Old Classifier").

On 1 January 2015, the new PP&E Classifier HK PK 12-2014 (the "New Classifier") came into force. It classified certain PP&E differently from the Old Classifier, which resulted in lower property tax base for some buildings and structures.

In 2016 the New Classifier was revoked by the tax authorities on the basis that it was not registered with the Ministry of Justice.

The Association of Kazakhstan Taxpayers requested the SRC to clarify which of the two PP&E Classifiers is applicable for tax assessment purposes, taking into account that the Old Classifier was also not registered.

#### Position of SRC

The SRC commented that the taxpayers should apply the Old Classifier with reference to the position of the Ministry of Investment and Development ("MID") which is the authorized state body in the field of technical regulation.

The SRC also stated that the taxpayers would not be exempt from penalties for understatement of

property tax as a result of applying the New Classifier.

*SRC letter №КТД-07-2-74668-КТД-31865 dated 28 December 2016*

#### Comments

Considering the SRC's position, we recommend applying the Old Classifier for payment of taxes in 2015 – 2016. To mitigate the risk of penalties, you may need to file additional tax returns on property tax and CIT.

### *Indexation clause in a loan agreement*

#### Position of SRC

The SRC clarified that income / expenses arising due to indexation of principal and interest under a loan agreement denominated in KZT should be recognised as interest income / expense pursuant to Article 12 of the Tax Code.

Therefore, the indexation amount should be treated as taxable income of the taxpayer that provided a loan. The party receiving the loan may claim deduction of indexation expense as part of interest expenses in accordance with Article 103 of the Tax Code.

*Letter of the SRC of MF of the RK, dated November 16, 2016 No. SRC-07-1-ЮЛ-Е-2606-КТД-28351*

#### Comments

We understand that SRC upheld a taxpayer's position that indexation under a KZT contract

should not be recognised as gain /loss from foreign exchange fluctuations for tax purposes.

At the same time, in practice taxpayers account for indexation on loans differently: as foreign exchange gains or losses, as interest, or financial instruments. Based on IFRS and depending on specific terms of each loan agreement, indexation could be recognized as any of the above.

To establish the appropriate tax treatment of indexation, we recommend taxpayers to consider the SRC explanations together with specific terms of relevant contracts and treatment of indexation in the accounting (bearing in mind the opinion of the auditors and IFRS specialists).

### *VAT offset under joint venture agreement*

#### **Position of SRC**

The SRC expressed its opinion regarding the offset of reverse-charge VAT ("RC VAT") and import VAT by contractual parties of a joint venture agreement, in cases when taxes were paid by an authorised representative acting at the expense and on behalf of the JV parties.

The SRC confirmed that if income and expenses are allocated among JV parties proportionately based on their participation interest in the JV, RC VAT and import VAT should be taken for offset by each party of the JV accordingly.

Additionally, RC VAT and import VAT paid by the JV's authorised representative would be reflected in the representative's tax accounts with the tax authorities, and not the tax accounts of the JV parties.

*SRC letter dated 7 November 2016 №КІД-07-1-Ю/І-Е-244-КІД-27417*

#### **Comments**

The issue of RC VAT and import VAT offset by an authorised representative of a JV was awaiting clarification for many years.

We hope that this letter confirming the right of the JV parties for VAT offset will positively affect the law enforcement practice. Nevertheless, tax legislation should also be amended

### *RC VAT on acquisition of international transportation services*

#### **Position of SRC**

The SRC holds the place of supply of international transportation services should be determined at the place of the supplier's entrepreneurial activity. Therefore, Kazakhstan should not be considered as a place of supply, if a non-resident service provider is not registered with the Kazakhstan justice authorities. Consequently, there should be no obligation to assess RC VAT.

*SRC letter dated 6 February 2017 №КІД-07-3-5017-КІД-2948*

#### **Comments**

The SRC has resolved uncertainty about the place of supply for international transportation services supplied by non-residents.

The SRC commented that provisions of Article 236.4 of the Tax Code are not applicable where services are supplied by a non-resident, as these provisions are of clarifying nature for services supplied in Kazakhstan. Application of 0% rate envisaged by Article 244 of the Tax Code is also not correct.

## Tax and Legal Alert

### PwC Kazakhstan

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#### *Let's talk*

For a deeper discussion of how this might affect your business, please contact PwC team members servicing your company, or any person below.



Michael Ahern, *Partner*  
*Tax and legal services*  
[michael.ahern@kz.pwc.com](mailto:michael.ahern@kz.pwc.com)



Timur Zhursunov, *Partner*  
*Tax services*  
[timur.zhursunov@kz.pwc.com](mailto:timur.zhursunov@kz.pwc.com)



Artem Petrukhin, *Partner*  
*Tax services*  
[artem.petrukhin@kz.pwc.com](mailto:artem.petrukhin@kz.pwc.com)



Elena Kaeva, *Partner*  
*Tax services*  
[elena.kaeva@kz.pwc.com](mailto:elena.kaeva@kz.pwc.com)



Rashid Gaissin, *Partner*  
*Legal services*  
[rashid.gaissin@kz.pwc.com](mailto:rashid.gaissin@kz.pwc.com)

### PwC Kazakhstan

34 Al-Farabi Ave.,  
Building A, 4<sup>th</sup> floor  
Almaty, Kazakhstan, A25D5F6  
Tel.: +7 727 330 32 00  
Fax: + 7 728 244 68 68

15/1 Kabanbay Batyr Ave.  
Business Centre "Q2", 4<sup>th</sup> floor  
Astana, Kazakhstan, Z05M6H9  
Tel.: +7 7172 55 07 07  
Fax: +7 7172 55 07 08

15 B Satpayev St.,  
Renaissance Hotel, 3rd floor,  
Atyrau, Kazakhstan, E02M0M8  
Tel.: +7 7122 76 30 00

[www.pwc.kz](http://www.pwc.kz)