

Review of State Revenue Committee (SRC) letters / June 2016

PwC Tax and Legal Alert: Review of the latest letters from tax authorities

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Taxation of premiums and bonuses

Position of SRC

SRC has clarified that where an agreement between parties envisages provision of premiums and bonuses (remuneration) for delivered services (accomplishment of the procurement plan) by a Kazakhstan supplier, then the Kazakhstan buyer of such services can offset the respective VAT. Further, the terms of awarding premiums and/or bonuses should be outlined in the agreement.

Cost incurred by the buyer of services with respect to payment of premiums and bonuses (for the accomplishment of the procurement plan) can be deducted for CIT purposes upon availability of appropriate primary documents justifying the costs associated with income-generating activity and the evidence of provision of such services (e.g., contract, act of acceptance, payment documents and other).

SRC letter dated 16 February 2016 №КІТІ-07-1-ЮЛІ-Е-243-КІТІ-3888

Comments

We recommend verifying if the approach used by your company is in line with the stated requirements for primary documents on bonuses / premiums, as well as with the obligation to issue

an invoice and act of acceptance for bonuses with VAT.

Reimbursement of historic costs determined in foreign currency

Position of SRC

SRC issued clarifications regarding the conversion of quarterly obligations on reimbursement of historic costs to KZT where they are determined in foreign currency.

According to these clarifications, the historic costs should be determined at actual market exchange rate as of 1 January of the relevant calendar year, and no additional recalculations are required.

Previously, SRC held a different position (as stated in a letter issued in 2015). The letter stated that historic costs are determined based on the market exchange rate as of 1 January of the corresponding year, while the amount of historic costs paid for the four reporting quarters should also be recalculated at the market exchange rate at the date of such payments. In case of a negative difference between the amount of historic costs paid and the recalculated amount, this should be added to the remaining balance of historic costs subject to reimbursement in the following periods.

SRC letter dated 11 March 2016. Link to the letter from official SRC website:

<http://kgd.gov.kz/ru/content/kommentariy-k-podpunktam-1-i-2-punkta-2-stati-328>

Comments

Taking into account the devaluation of KZT against USD, the approach suggested by the tax authorities in their first letter issued in 2015 could have led to the increase of the tax burden of subsoil users. To address this, we approached the SRC for further clarification, which resulted in the new letter mentioned above with a more favourable position for taxpayers.

Residence certificates of Russian taxpayers

Position of SRC

The SRC stated that the provisions of the Kishinev (Minsk) convention are not applicable to tax matters. Therefore, general requirements should apply to certification of the signature and stamp on tax residence certificates issued by the Russian authority (should be apostillized).

This requirement must be followed until an Agreement on the procedure of acceptance of official documents comes into force. Based on the Agreement, the documents issued by the authorized body of one of the countries, sealed with an official stamp, will be accepted without any special verification, including apostilization or consular legalisation.

The Agreement has been signed by both parties and adoption of the corresponding draft decree of the Government of Kazakhstan is in progress.

SRC letter dated 20 April 2016 #КГД-07-3-ЮЛ-Е-815-КГД-9823

Comments

Until this Agreement comes into force, the apostilization requirement continues to apply to residence certificates provided by Russian suppliers.

According to paragraph 1 of the Agreement, the simplified order of acceptance of residence certificates will be applicable to official documents issued by the authorized bodies from 1 January 2011.

Period for VAT offset

Position of SRC

Based on the SRC position under Article 256.1.2 of the Tax Code, a VAT registered recipient of goods, work, or services has a right to offset VAT paid upon such purchases, if the supplier issued a VAT invoice. Hence, the amount of VAT can be offset if purchased services are used for the purposes of taxable turnover, and if a supplier issued an invoice on taxable turnover. On this basis, the period of VAT offset should be determined in accordance with the date of invoice.

SRC letter dated 29 April 2016

Comments

This interpretation is controversial as the Tax Code has direct provisions (Article 256.3) based on which VAT should be offset in the period when goods, work, or services were received (with minor exceptions). However, the abovementioned position on the VAT offset period was repeatedly voiced, including at the Tax Conference organised by the Association of Taxpayers of Kazakhstan in Almaty on 3 June 2016, where SRC representatives warned about possible fines if the taxpayers' approach is different from the position stated above.

Rent tax on export

Position of SRC

SRC issued a clarification letter in respect of rent tax on export for the periods prior to 2015 (prior to introduction of amendments to Articles 301 – 302 of the Tax Code), providing answers to the following questions of a taxpayer:

- 1) What should be deemed as export of goods for purposes of calculation of rent tax on export before 2015?
- 2) What volumes of crude oil should be considered as exported?
- 3) What are the documents confirming the volume of exported oil and period of export?
- 4) The procedure for determining and applying the barrelization coefficient, which documents and their respective dates are the base for its determination?

On the first question, the SRC clarified that the amendments of the law of 28 November 2014 is of

clarifying nature, therefore, to determine export in prior periods, current provisions of Article 301 should be used.

On the second and third questions, SRC provided a less clear answer. It can be interpreted as permitting to apply current provisions of the Tax Code to determine the volume of exported oil and relevant supporting documents (taking into account the final customs declaration).

The SRC did not provide an answer to the question of which quality certificate should be used if a taxpayer receives several passports during the export process.

SRC letter dated 17 May 2016 № КГД-09-ЮЖ-Е-981-КГД-12026

Comments

Considering the statement that the 2015 Tax Code amendments related to rent tax on export were clarifications, taxpayers may have either a tax optimization opportunity or tax exposures for the periods prior to 2015. Nevertheless, it should be noted that tax inspectors are not bound to follow the SRC letters during tax audits.

Due to insufficient explanations provided by the tax authorities, further developments should be monitored.

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If you are interested in additional information, please contact PwC specialists, working within the group servicing your company, or any mentioned below person:

Michael Ahern, Partner
michael.ahern@kz.pwc.com

Elena Kaeva, Partner
elena.kaeva@kz.pwc.com

Nazira Nurbayeva, Director
nazira.nurbayeva@kz.pwc.com

34 Al-Farabi Ave.
Building A, 4th floor
Almaty, Kazakhstan, 050059
Tel.: +7 (727) 330 32 00
Fax: +7 (727) 244 68 68
www.pwc.kz

Timur Zhursunov, Partner
timur.zhursunov@kz.pwc.com

Dana Tokmurzina, Senior Manager
dana.tokmurzina@kz.pwc.com

15/1 Kabanbay batyr Ave.
Business Centre "Q2", 4th floor
Astana, Kazakhstan, 010000
Tel.: +7 (7172) 55 07 07
Fax: +7 (7172) 55 07 08
www.pwc.kz