LEGAL HIGHLIGHT

Permanent establishments: Key features and taxation

13 July 2017

Today's Legal Highlight is dedicated to such complex topic as permanent establishment ("PE"). Under Uzbek Law, PE is not considered as separate legal entities and used solely for tax purposes.

Below we briefly touch upon those provisions on PE set in article 20 of the Uzbek Tax Code that are either different from or supplement the OECD Model Tax Convention on Income and Capital.

It should be noted that the principle of supremacy of international law is recognized in the Uzbek legislation. This principle is fixed, among others, in article 4 of the Uzbek Tax Code. Hence, one should always consult relevant Double Tax Treaty that Uzbekistan has concluded with the other states to see whether there are any discrepancies.

Permanent Establishment

any place through which business is being carried out; carrying out business for more than 183 days within any subsequent 12-month period

Examples

any place related to production, processing, making complete set, packaging and sale of goods;

any place related to pipelines, gas pipelines, exploration of natural resources;

any place related to installation, assembling, erection, setting, commissioning and/or maintenance of equipment;

operation of game machines (including play-stations), computer networks, amusement rides, transportation and other infrastructure;

sale of goods through warehouses located at Uzbekistan and belonging to, leased or used by the non-resident on any legal grounds;

doing any works, rendering any services, and conducting any activities, except for those included in the exclusions.

prepared by KOSTA LEGAL LAW FIRM







Exclusions

use of facilities solely for the purpose of storage, display and/or delivery of goods belonging to the non-resident prior to sale of the goods;

operations on export and import of goods to Uzbekistan done exclusively in the name of the non-resident:

possession of shares, participatory interest in the capital funds of the residents of Uzbekistan as well as possession of any other property in the territory of Uzbekistan;

secondment of personnel to residents of Uzbekistan for undertaking of works in Uzbekistan provided such personnel acts in the name of and in the interests of the resident to whom such personnel was seconded.

Date of creation

On the date of commencement of works, services;

For construction (installation, asse

mbly, erection) works – from the date of transfer of a construction site to the contractor.

Date of termination

Date of termination of activities through permanent establishment: day of signing the act of acceptance of performed works and/or rendered services; day of issuance of the last invoice for works performed and/or services rendered; day of submission of the final report on calculation of the profit tax to the state tax authorities of Uzbekistan, whichever is later.

Bank Accounts in UZS

Foreign legal entities through their PEs may open bank accounts in UZS that can be used for paying:

- 1. taxes and other mandatory payments;
- 2. transfer to foreign entity's other accounts opened in banks of Uzbekistan
- 3. operating expenses of PE including:
- -rental costs:
- -utility payments and other similar payments;
- -purchase of commodities and materials necessary for daily operations of PE;
- -communication channel lease payments;
- -costs of shipping and delivery of goods;
- -costs for mailing and periodicals;
- -salary payments and remuneration for employees;
- -employee travel expenses;
- -insurance premiums for mandatory and volunteer insurances;
- -medical treatment of employees in case of accidents and deceases.

Foreign entities may deposit the following monetary funds into the PE's bank accounts:

funds from sale of goods, performance of works and services and carrying out PE's other activities in Uzbekistan:

funds from PE's other bank accounts opened in banks of Uzbekistan; funds from sale of foreign currency to its servicing bank.

Bank accounts in foreign currency

Foreign legal entities through their PEs may open bank accounts in foreign currency that can be used:

- 1. for covering employees' travel expenses in foreign currency for business trips outside of Uzbekistan;
- 2. to sell foreign currency to its servicing bank in Uzbekistan;
- 3. to be transferred to other bank accounts of PE in Uzbekistan;
- 4. for other legitimate purposes.

Foreign entities may deposit the following monetary funds into the PE's bank accounts:

- funds transferred from bank accounts of foreign entities abroad;
- funds from PE's other bank accounts opened in banks of Uzbekistan;
- funds from sale of foreign currency to its servicing bank.

Import

Foreign entities acting through PE may import in its name goods (works and services) into Uzbekistan.

TAXES	TAX BASE	TAX RATE
Corporate Income Tax	Net income before tax adjusted for non-deductible expenses	7.5%
Net Profit Tax	Net income after Corporate Income Tax	10%
Property Tax	Average annual net book value of fixed assets (incomplete construction and uninstalled equipment) accounted for in the books of PE $$	5%
Land Tax	Area of land plots owned or used	Rates vary depending on the location and type of land parcel
Water Use Tax	Volume of consumed water from surface and underground sources	1 cubic meter of surface water – UZS 85.4
		1 cubic meter of subsurface water – UZS 108.5
Unified Social Payment	Total remuneration payable to staff (local and foreign)	25%
Personal Income Tax (as tax agent)	Income paid to employees including in-kind benefits	O-1 MMW[1] - 0%
		1-5 MMW - 7.5%
		5-10 MMW - 17%
		10+ MMW - 23%

As of March 2017 one minimal monthly salary equals to UZS 149.755, which is equal to approximately USD 43.

Investments Decree of the President of Uzbekistan No. UP-4853 dated October 26, 2016

The Decree sets a unified legal, tax and customs regime for the free economic zones "Navoi", "Angren" and "Djizakh". The Decree further establishes the Unified Administrative Council for these free economic zones.

Amendment to the Law "On Joint-Stock Companies and Protection of Shareholders' Rights"

No. ZRU-411 dated September 23, 2016

Key provisions:

Joint-stock companies shall have at least 15% foreign shareholding, except for cases set by the President and the Cabinet of Ministers of Uzbekistan;

Joint-stock companies with at least 15% foreign shareholding are exempted from (i) corporate income tax; (ii) property tax; (iii) social infrastructure tax; (iv) unified tax payment; (iv) mandatory payments to the Republican Road Fund. The term of such exemption will be determined by the Cabinet of Ministers, depending on the category and specialization of joint-stock companies; Joint-stock companies with foreign shareholding are exempted from the state fees in general and economic courts for claims on breach of their rights and interests as shareholders.

Tourism Decree of the President of Uzbekistan No. UP-4861 dated December 2, 2016

Key provisions:

Creation of the State Committee on Development of Tourism;

From January 1, 2017 hotels, motels, holiday camps and similar places are exempted from obtaining the license, but are subject to mandatory certification;

Starting from January 1, 2018 public catering companies and transportation companies specializing on servicing foreign tourists are subject to mandatory certification;

From January 1, 2017 tour guides can render their services only upon obtaining the qualification certificate from the State Committee on Development of Tourism;

Starting from April 1, 2017 visa requirements are abolished for tourists - citizens of Australia, Austria, Great Britain, Germany, Denmark, Spain, Italy, Canada, Luxembourger, the Netherlands, the Republic of Korea, Singapore, Finland, Switzerland and Japan that are staying for a period of not more than 30 days;t

Starting from April 1, 2017 tourists age 55 and above – citizens of Belgium, Indonesia, the People's Republic of China (as a part of tourist group), Malaysia, USA, France, Vietnam, Israel, Poland, Hungary, Portugal and Czech Republic are also exempted from obtaining visa to Uzbekistan, provided their stay last for not more than 30 days.

Payment for hotel services by foreign tourists shall be done in hard currency;

4-star hotels and above are exempted from (i) corporate income tax, (ii) land tax; (iii) property tax; and (iv) unified tax payment for a period of 5 years.

Entrepreneurship Decree of the President of Uzbekistan No. UP-4848 dated October 5, 2016

The Decree is issued as a document signaling entrepreneurs the intention of the Government to fundamentally liberalize the market and improve the business environment in Uzbekistan. The Decree defines the Government's priorities and specific steps that it plans to take to realize these changes. This is reflected in the Program of complex measures for ensuring expedient development of entrepreneurship, protection of private property and improvement of business environment in the country.

The state policy in the sphere of entrepreneurship shall be in: (i) provision of more freedom to small business and private entrepreneurship; (ii) cardinal decrease of interference with the businesses' affairs; (iii) ensuring early prevention of infringements of law and increase of effective use of preventive measures.

Key provisions (starting from January 1, 2017):

all unscheduled and counter inspections of entrepreneurs, including those initiated under criminal investigations, are prohibited;

entrepreneurs and their employees are exempted from criminal and administrative liability for law infringements, provided (i) these were the entrepreneurs' first infringement, (ii) committed violations have been voluntarily liquidated; (iii) material damage was fully compensated (except for damages caused to life and health of people);

imprisonment as punishment shall not be applied to entrepreneurs;

newly established production companies with foreign investments shall have a right within 5 years to opt for the tax regime valid at the time of their incorporation;

the requirement for customs registration of export contracts is abolished.

Decree of the President of Uzbekistan No. PP-2646 dated October 28, 2016

The Decree sets that starting from April 1, 2017 the state registration of business entities and individual entrepreneurs shall be done 24/7 through automated online system.

Decree of the Cabinet of Ministers of Uzbekistan No. 317 dated September 21, 2016

Instead of applying to the cadaster bodies, entrepreneurs shall register their rights over immovable property through so-called "one-stop shop" centers.

Justice System Decree of the President of Uzbekistan No. UP-4850 dated October 21, 2016

The Decree adopts the Program of complex measures for further reform of justice system and reinforcement of guarantees of protection of people's rights and freedoms.

The Decree further provides for specific measures that enter into force starting from April 1, 2016:

abolishment of arrest as a mean of criminal punishment;

the term of taking suspects in custody is shortened from 72 to 48 hours;

the maximum terms for arrest, house arrest and pretrial investigation is

the maximum term for revision of the court orders in civil law disputes as the exercise of supervisory powers is shorten from 3 to 1 year:

the regional appellate economic courts will be established.

The Decree further sets new tenure for the judges. Particularly, the first term is 5 years, the following term is 10 years and then – unlimited.

Amendments into the Code of Administrative Responsibility and the Criminal Code of Uzbekistan

No. ZRU-411 dated September 23, 2016

It is has been determined that collection and dissemination of information about private life of individuals, constituting their private or family secret, without their consent is now punishable by fines amounting to 10-40 minimum monthly wages. Repeated commission of the offence may lead to larger fines or imprisonment of wrongdoers' officers.

Decree of the Cabinet of Ministers of Uzbekistan No. 366 dated October 27, 2016

The Decree sets personal responsibility of the heads of the ministries, state agencies, khokims (mayors of regions, citizen and districts) for unconditional performance of the requirements set by the Law of Uzbekistan "On Applications of Individuals and Legal Entities".

What is Next?

The following are the reforms that the Government announced to implement in the coming year:

liberalization of foreign currency market;

adoption of new laws "On Authorized Representative of Oliy Majlis of Uzbekistan on protection of rights and interests of entrepreneurs (business ombudsman)", "On Public Procurement", "On Administrative Procedures". "On Public-Private Partnership":

Simplification of the process on registration of legal entities by (i) reducing the number of documents to be provided to the state registering authority; (ii) abolishing the requirement for notary certification of the constitutive documents; (iii) abolishing the requirement to provide extract from the trade register of the foreign shareholders; (iv) reducing the state registration fee by two times;

Abolishing the requirement for the state registration of copyrights for work of science, literature and art:

Abolishing the requirement for registration of legal entities and individuals using the objects of intellectual property in the territory of Uzbekistan.