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**Alert on the decision
of the Appeal commission of
the Ministry of finance
on tax dispute**

On 24 November, 2023 the Appeal commission of the Ministry of finance of the Republic of Kazakhstan (the 'Appeal Commission') issued a decision on the tax dispute concerning **transfer pricing control of a loan agreement** [1].

THE DISPUTE BACKGROUND:

▶ Regional tax authorities subjected a Kazakh company to a thematic tax audit on transfer pricing issues. As a result, the Kazakh company was charged with withholding tax and penalty.



[1] <https://www.gov.kz/memleket/entities/minfin/press/article/details/141979?lang=ru>

▶ The ground for such charging was that the interest rates of the loan granted by a German company to the Kazakh company exceeded the interest rates of the loans granted by the Kazakh banks. i.e. the market rates.

▶ The regional tax authorities used the National Bank of the Republic of Kazakhstan as the source for the market rates determination as the officially recognised sources (like Bloomberg) did not provide for such information.

▶ The Kazakh company disagreed with the conclusion of the regional tax authorities on the ground that it used the data of comparable transactions with specific criteria (credit rate, deadline, interest type, currency etc.). While the data of the National Bank of the Republic of Kazakhstan is an aggregate data not taking into consideration the additional information on the loan conditions.





The Appeal Commission conclusion:



The Appeal Commission recognised the adjustment of the loan interest rate as justified on the ground that the Transfer Pricing Law allows to apply the data of the banks for the purpose of the market rate determination in case the officially recognised sources do not provide for such information.



The Appeal Commission also recognised as justified the charged 15% withholding tax, despite the reduced tax rate envisaged by the Double Tax Treaty between Kazakhstan and Germany as this treaty prohibits application of the reduced tax rate to the part of income which was increased by the parties due to the special relations.



IN VIEW OF THIS, THE APPEAL COMMISSION DISMISSED THE KAZAKH COMPANY'S APPEAL.



ABOUT US

GRATA International is the largest independent Kazakhstani law firm, and one of the leading law firms in Central Asia and the Caspian Region. GRATA has provided a wide range of legal services in these regions for more than 30 years.

Throughout its existence the Firm has developed an experienced tax practice. In view of this, in 2005 the tax department was formed. Unlike many consulting companies, GRATA's tax team comprised mainly of lawyers and auditors who have experience of working in the tax authorities. This feature enables us to provide our clients not only correct but practically feasible advice.

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Taxation of Subsoil Users;



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Taxation of Non-Residents;



Corporate Taxation;



Taxation of Individuals;



Tax Support and Structure in M&A Transactions;



Tax Due Diligence (Tax Audit);



Tax Investment Preferences and Tax Planning;



Representation and Protection of Interests in the Course of Tax Disputes;



Taxation of Bank and Financial Transactions;

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