



# Kazakhstan: International Structures, M&A Deals, and Restructuring

Overview of Landmark Tax Disputes

June 2025



# Contents

## 1 Withholding Tax on Income of a Foreign Company with a Branch in Kazakhstan

- The TOO Katko Case

## 2 Application of Reduced Withholding Tax Rates: Tax Residency vs. Registration

- The TOO Potential Oil Case

## 3 Application of the Three-Year Tax Benefit in Restructuring

- The TOO Dank Case

## 4 Dispute on Tax Benefits Within the Concept of the Beneficial Owner of Income

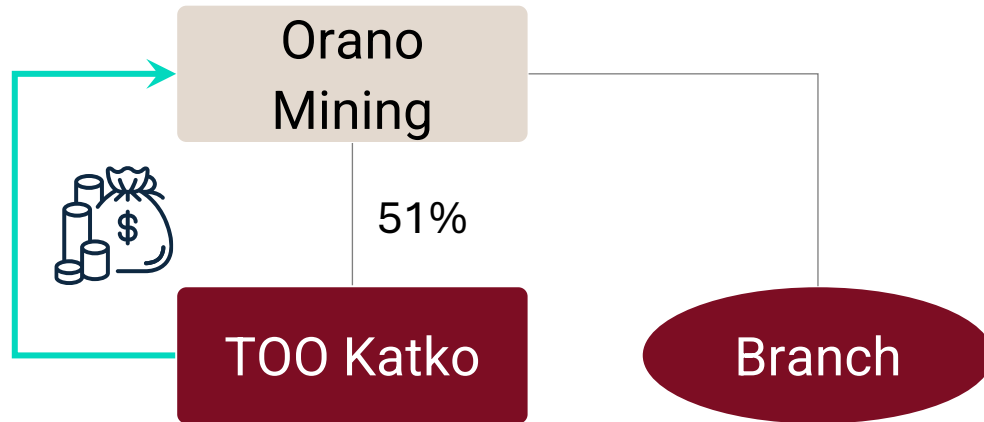
- The TOO Bukhtarma Cement Company Case

## 5 Tax Consequences of Deals with Subsoil User Companies

- The CCC Mining Construction B.V. Case
- The East Aral Petroleum B.V. Case

# **Withholding Tax on Income of a Foreign Company with a Branch in Kazakhstan**

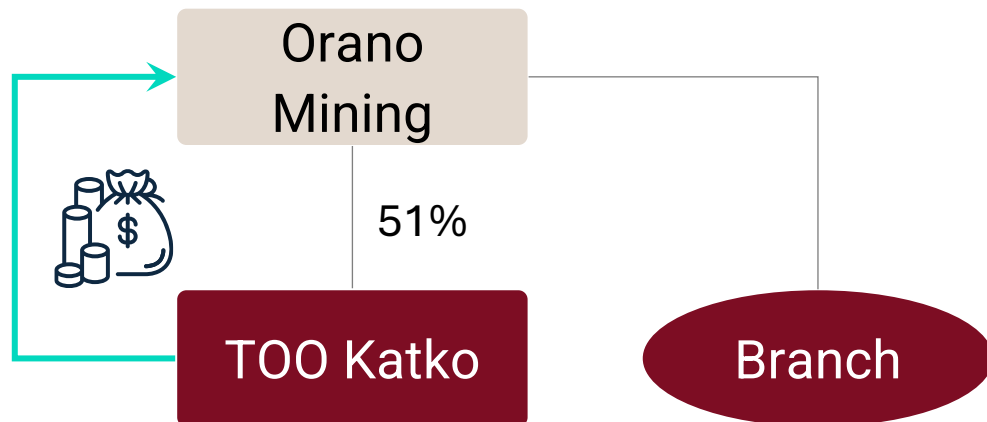
# The T00 Katko Case



## Case Overview:

- In 2014–2018, the Kazakhstani company (T00 "Katko") made payments to its French parent company (Orano Mining) in the form of dividends, penalties on dividend payments, service fees for consulting, and royalties.
- Tax treaty benefits were applied to these payments: withholding tax exemption for services and penalties, 5% rate on dividends, and 10% on royalties (importantly, royalties WHT was withheld "at the expense of the tax agent").
- During a tax audit, the tax authorities challenged the treaty benefits due to the parent company's branch presence in Kazakhstan. Additional withholding tax was assessed: 20% for dividends, penalties, and services; 15% for royalties.

# The T00 Katko Case



## Court's Decision:



The Supreme Court upheld the company's right to treaty benefits for three out of the four types of income: dividends, penalties, and services. The branch did not prevent application of the treaty, as services and dividends were unrelated to it. Additionally, penalties were not considered dividends, and their level was market-based.



Regarding royalties, the court sided with the tax authorities: payment of tax at the expense of the Kazakhstani company (the tax agent) does not entitle the taxpayer to a reduced rate.



The court upheld the withholding tax benefits for three out of four types of income (Supreme Court ruling No. 6001-22-00-6ap/2368 dated 24 April 2023).

# Conclusions



The presence of a branch in Kazakhstan may formally prevent a foreign company from applying tax treaty benefits to the income it receives from Kazakhstan.

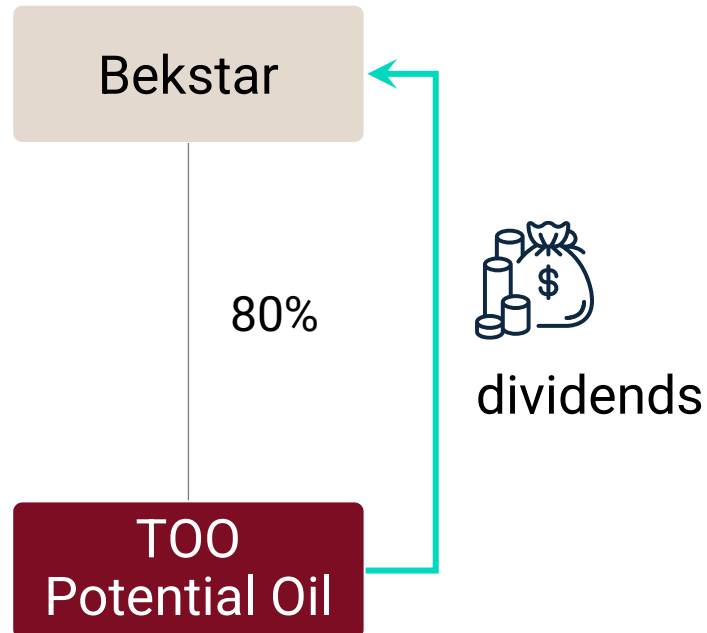


Although the court in this case took a balanced approach and confirmed the applicability of treaty benefits, the risks in structures with Kazakhstani branches remain.

# Application of Reduced Withholding Tax Rates: Tax Residency vs. Registration



# The T00 Potential Oil Case

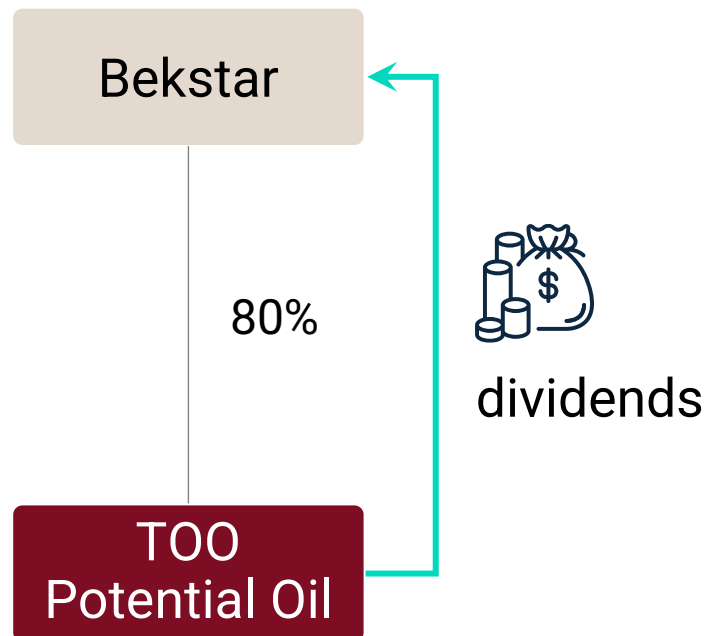


## Case Overview:

- In 2018-2022 the Kazakhstani company T00 Potential Oil distributed dividends to its 80% parent company, Bekstar.
- Bekstar was originally registered in the BVI, but in 2017 it registered a branch in Russia and became a Russian tax resident company. T00 Potential Oil applied a 10% withholding tax rate on the distributed dividends, relying on the Kazakhstan–Russia tax treaty.
- During a tax audit, the tax authorities challenged the treaty benefits and imposed a 20% withholding tax, arguing that the parent company was registered in “tax heaven”. They claimed that the dividend distribution was not eligible for tax treaty relief. The company disputed this in court.



# The T00 Potential Oil Case



## Court's Decision:

- ➔ The Supreme Court upheld the company's right to treaty benefits, concluding that Bekstar correctly confirmed its tax residency in Russia, and the benefits should apply to tax resident companies. The fact that tax residency was claimed through its Russian branch, which received the dividends, was deemed irrelevant.
- ➔ The court also noted that treaty benefits still apply even if the dividends were not subject to tax in Russia. A 0% tax rate applicable to dividends does not mean the company is not subject to tax.



The court upheld the 10% withholding tax rate for dividends under the Russia-Kazakhstan tax treaty (Supreme Court ruling No. 6001-22-00-6ap/1165 dated 4 April 2023).

# Conclusions



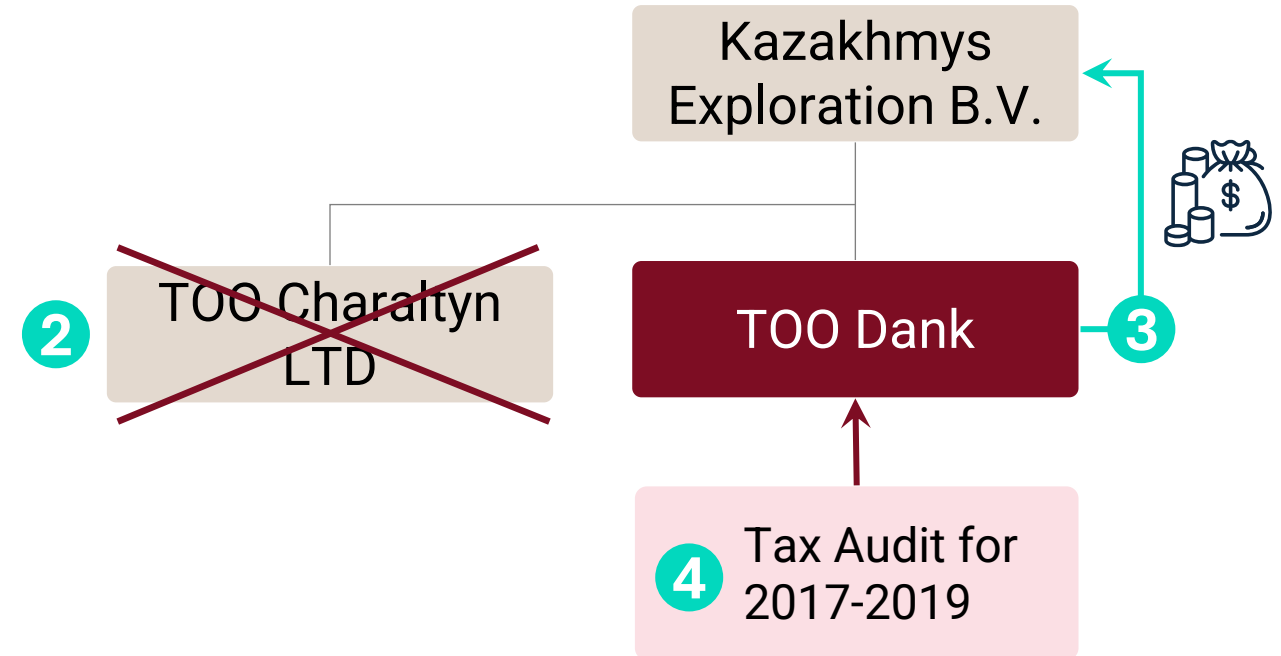
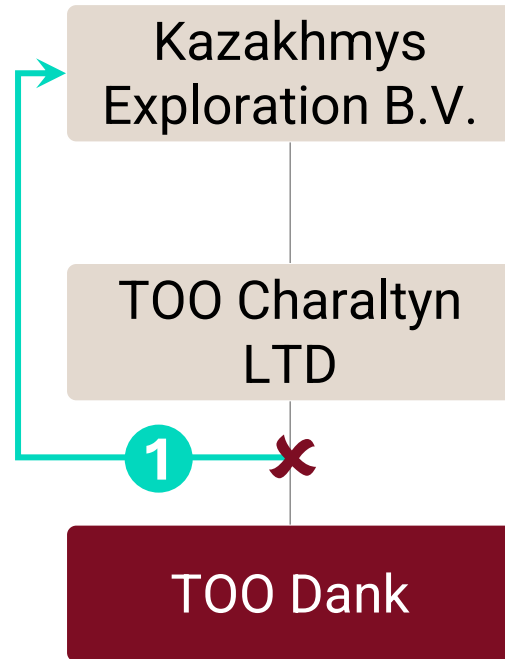
Despite challenges from the tax authorities, tax treaty benefits should apply based on tax residency, regardless whether the company is registered in another country.



Another important takeaway from the TOO Potential Oil case is that the exemption of dividends from taxation in the parent company's country does not prevent the application of a reduced withholding tax rate under the tax treaty at the Kazakhstani subsidiary's level.

# Application of the Three-Year Tax Exemption in Restructuring

# The TOO Dank Case



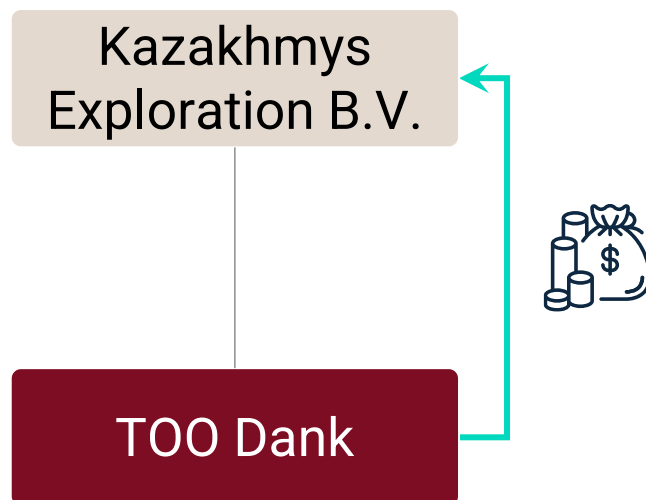
**1** In January 2017, Kazakhmys Exploration B.V. received TOO Dank as a payment to the shareholder from the company's former shareholder (and Kazakhmys Exploration B.V.'s direct subsidiary) TOO Charaltyn LTD.

**2** In December 2017, TOO Charaltyn LTD was liquidated.

**3** In October 2018, TOO Dank distributed dividends to its new shareholder, applying an exemption from withholding tax based on the exemption available after the three-year holding period has passed.

**4** The tax inspection denied the benefit and imposed a 15% withholding tax. The company disputed this decision in court.

# The TOO Dank Case



## Court's Decision:



The court concluded that the withholding tax exemption for dividends was not applicable because its conditions were not met:

- The company's ownership changed less than three years before the dividend payment and was not a result of a reorganization.
- The founders of the previous and new owners were different entities.



Additionally, before 2013, TOO Dank was a subsoil user, and the retained earnings from that period were significantly lower than the dividends distributed for 2017.



The court ruled that the withholding tax claim was justified (Supreme Court ruling No. 6001-21-00-3r/6698 dated 20 December 2021).

# Conclusions



The three-year period for the dividend tax exemption is interrupted if a Kazakhstani company is sold to entities with different shareholders. It remains uninterrupted only in cases of reorganization or a sale between companies with the same direct owners.



The three-year dividend exemption has been replaced by a reduced 10% withholding tax rate (compared to the standard 15%), while retaining the same rules — i.e., reorganizations and sales between companies with the same owners do not interrupt the three-year period.

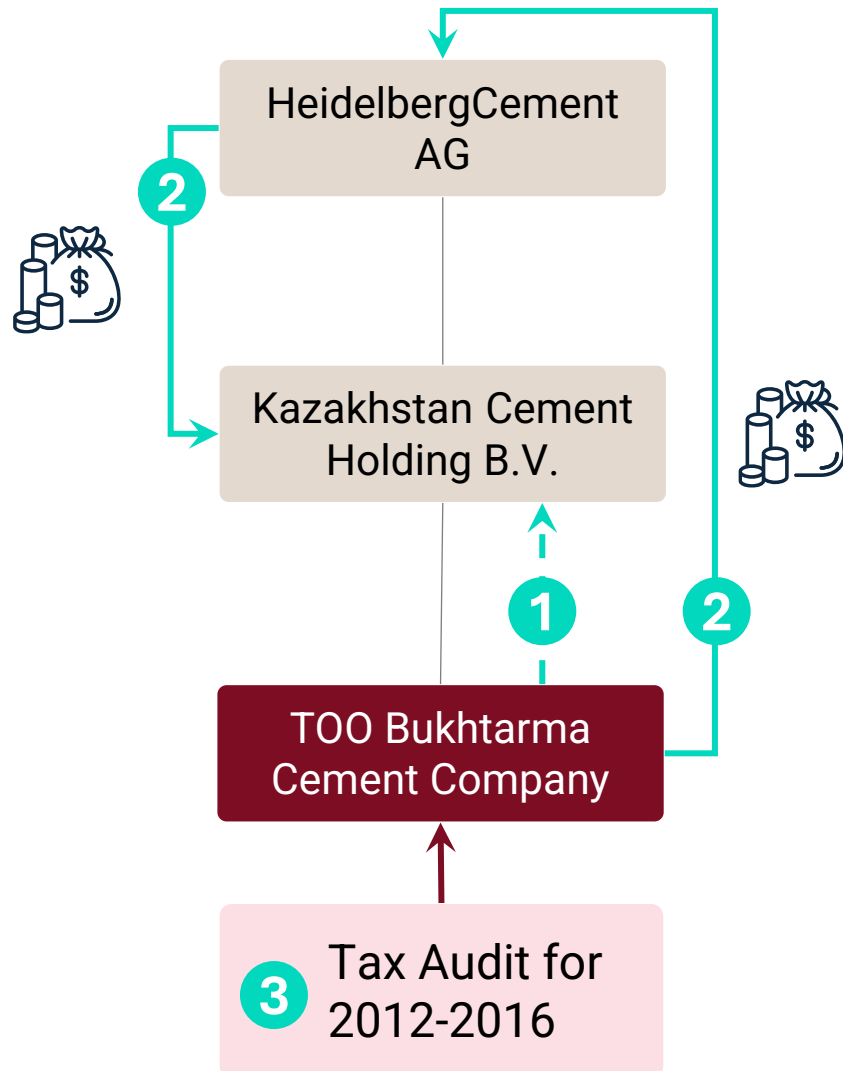


A similar incentive applies to capital gains, allowing full exemption under stricter conditions: the three-year holding period remains uninterrupted only in the case of a reorganization.

# Tax Benefits Within the Concept of the Beneficial Owner of Income



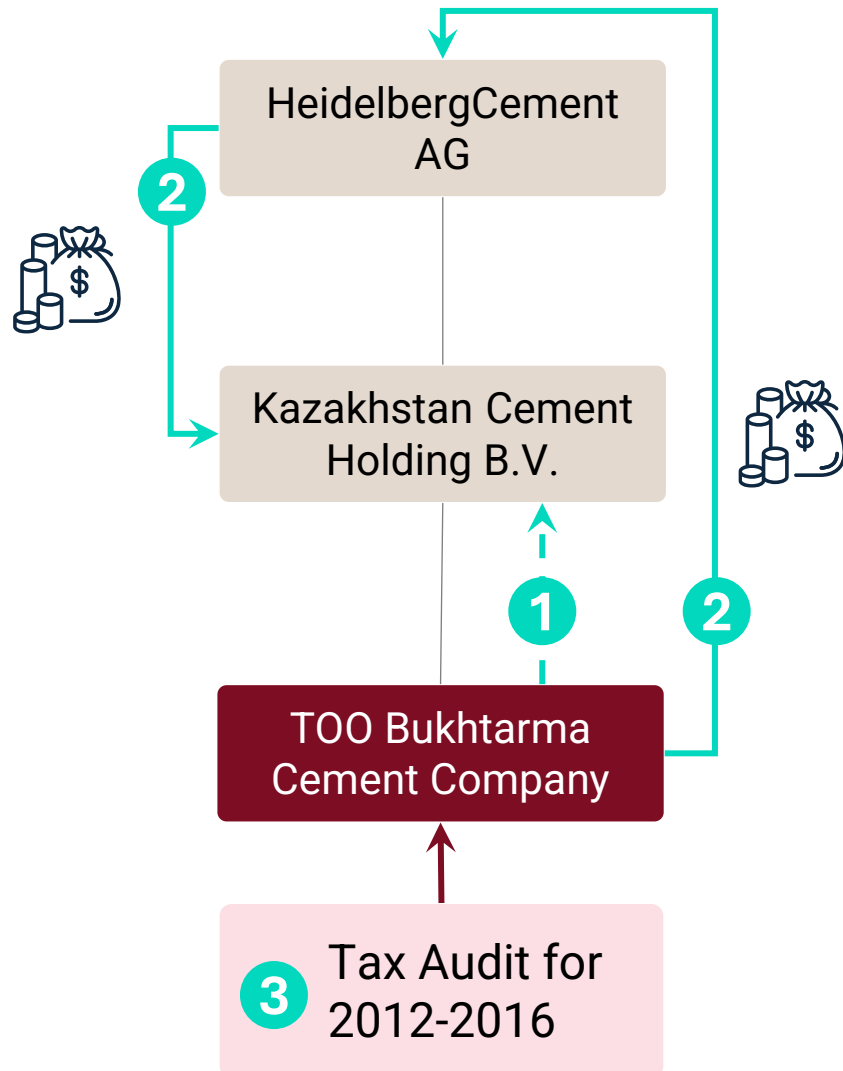
# The TOO Bukhtarma Cement Company Case



## Case Overview:

- 1 In 2013, the Kazakhstani company TOO Bukhtarma Cement Company announced the distribution of profits in the form of dividends to its Dutch parent company, Kazakhstan Cement Holding B.V.
- 2 By order of the parent company, the dividends were transferred to the account of another company, HeidelbergCement AG, which is the parent company of the direct Dutch shareholder of the LLP. Subsequently, these dividends were transferred to Kazakhstan Cement Holding B.V. A reduced withholding tax rate of 5% was applied under the Kazakhstan-Netherlands tax treaty.
- 3 The tax inspection reassessed the withholding tax at 15%, arguing that the German company was not the beneficial owner of the income. The company challenged this decision in court.

# The TOO Bukhtarma Cement Company Case



## Court's Decision:



The court stated that to qualify for a reduced withholding tax rate, three conditions must be met:

1. The existence of an international treaty;
2. The non-resident must be the ultimate beneficial owner of the income;
3. The non-resident must be a tax resident of the treaty country.



The court concluded that the direct parent company, Kazakhstan Cement Holding B.V., was the beneficial owner of the dividends and thus entitled to the 5% reduced tax rate.



The court ruled that the withholding tax charge was unjustified (Supreme Court ruling No. 6001-20-12-6a/56 dated 19 November 2020).

# Conclusions



Treaty benefits do not apply to intermediaries. The mere receipt of money does not mean that the recipient is the beneficial owner of the income for the purposes of reduced withholding tax rates.



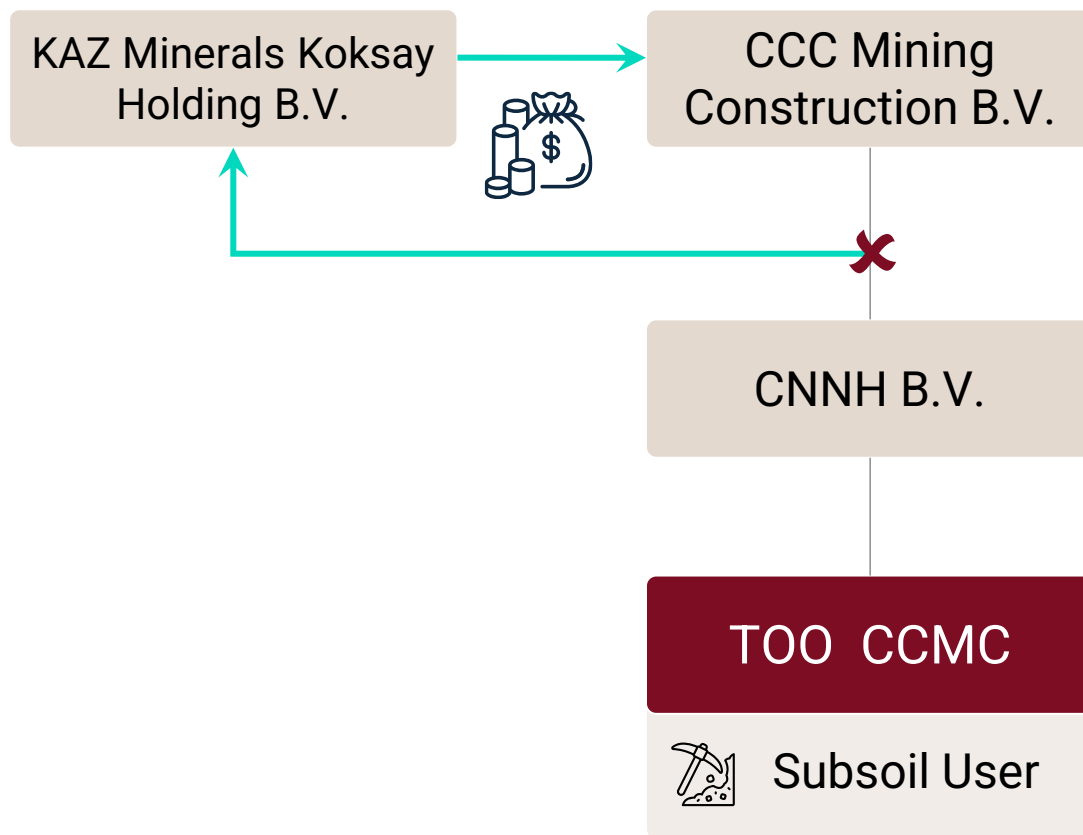
Cash flows and the ultimate "destination" of the income are significant but not the sole determining factor.



The beneficial ownership concept is complex, and its application requires case-specific analysis without clear-cut answers.

# Tax Consequences of Transactions with Subsoil User Companies

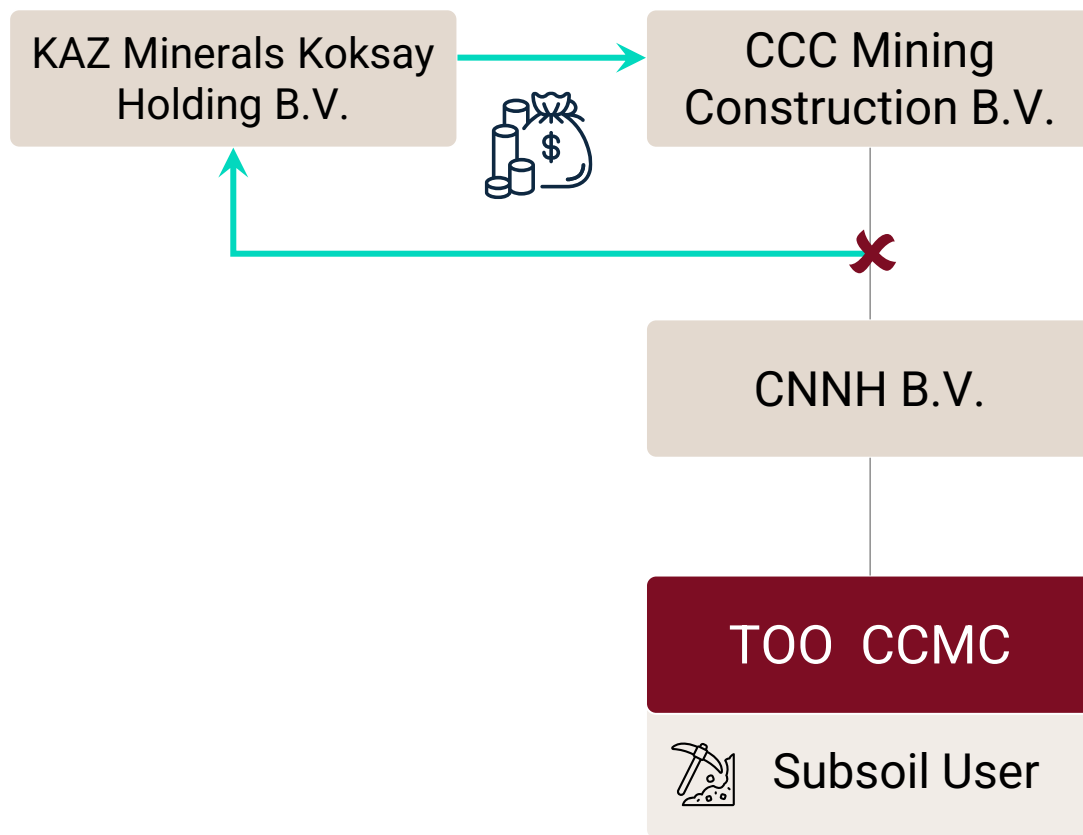
# The CCC Mining Construction B.V. Case



## Case Overview:

- In 2014, the Dutch company KAZ Minerals Koksay Holding B.V. acquired a 100% stake of Consolidated Noord Nederland Holdings B.V. (CNNH B.V.), which in turn owned 100% of the Kazakh company TOO Consolidated Construction Mining Company (TOO CCMC), from another Dutch company, CCC Mining Construction B.V.
- TOO CCMC was a subsoil user, so the buyer registered in Kazakhstan and withheld tax on capital gains from the sale of shares.
- The Dutch company (the seller) filed a claim for a refund of the withheld tax from the source.
- The Kazakh tax authorities denied the tax refund, and the company took the case to court.

# The CCC Mining Construction B.V. Case



## Court's Decision:



The first two court instances ruled in favor of the taxpayer, deciding that the tax authorities failed to prove that the subsoil user (the company) was not engaged in business activities using licenses related to real estate. Thus, the exemption under Article 13, Paragraph 2, Subparagraph 13 of the Kazakhstan-Netherlands treaty applied.

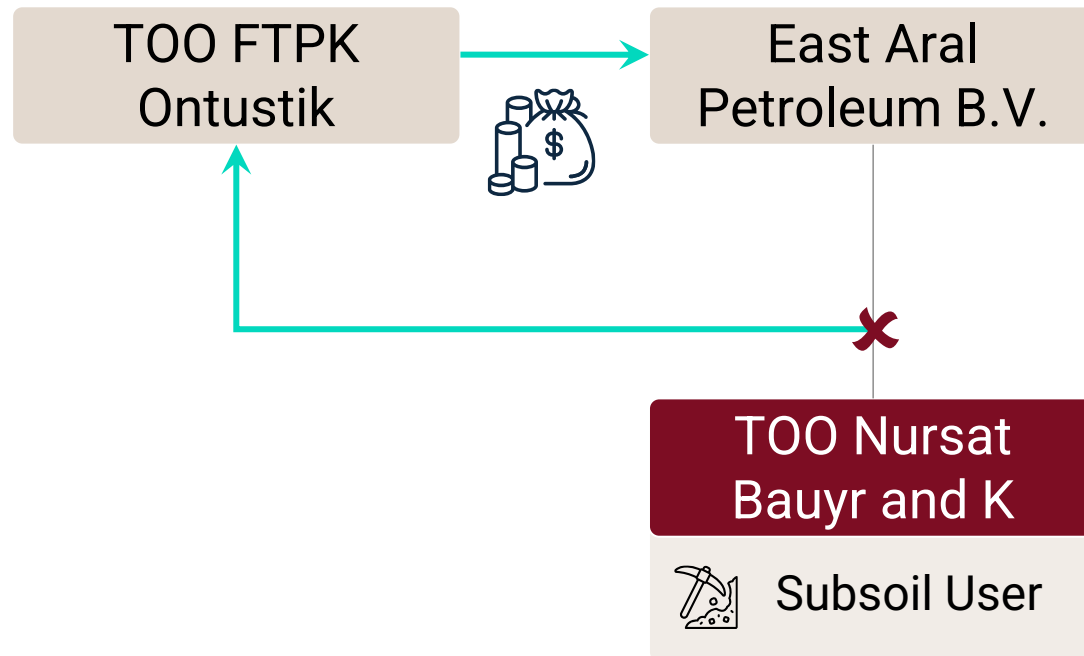


However, the Supreme Court overturned these decisions and ruled that the withheld tax could not be refunded.



The court denied the refund of the tax withheld in Kazakhstan on the purchase of shares (Supreme Court ruling No. 6001-16-00-3Г/8195 dated 19 October 2016).

# The East Aral Petroleum B.V. Case

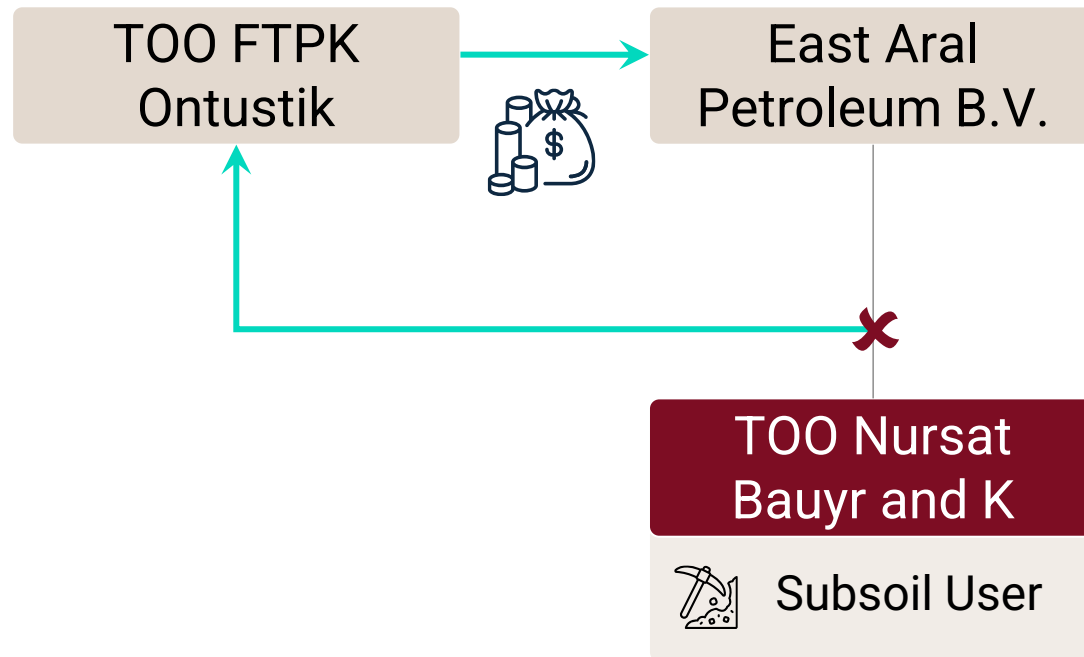


## Case Overview:

- In 2010, the Kazakh company TOO FTPK Ontustik acquired 90% of the shares in another Kazakh company, TOO Nursat Bauyr and K, from the Dutch company East Aral Petroleum B.V.
- The acquired company was a subsoil user.
- The buyer withheld a 15% tax at the source from the paid remuneration.
- The Dutch company (the seller) filed a claim for a refund of the withheld tax.
- The Kazakh tax authorities denied the refund, and the company took the case to court.



# The East Aral Petroleum B.V. Case



## Court's Decision:



The court considered the argument that, according to the Netherlands-Kazakhstan tax treaty, income from the sale of shares, the value of which consists of real estate (including rights to the exploitation of natural resources), is subject to taxation in Kazakhstan, excluding property where business activities are conducted.



At the same time, the tax withheld in Kazakhstan can be deducted in the Netherlands under the tax agreement.



The court ruled that the refusal to refund the tax withheld in Kazakhstan at the time of purchase from the source is justified (Supreme Court ruling No. 6001-18-00-3G/4708 dated 13 August 2018).

# Conclusions



The sale of a subsoil user company is subject to withholding tax in Kazakhstan.



Courts side with the tax authorities and do not agree that, under the tax treaty between Kazakhstan and the Netherlands, the withholding tax is not due in Kazakhstan.

# Contact Details

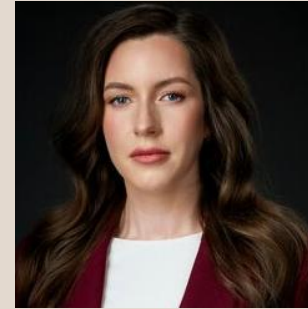


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