



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

Overview of Landmark Tax Disputes

December 2025



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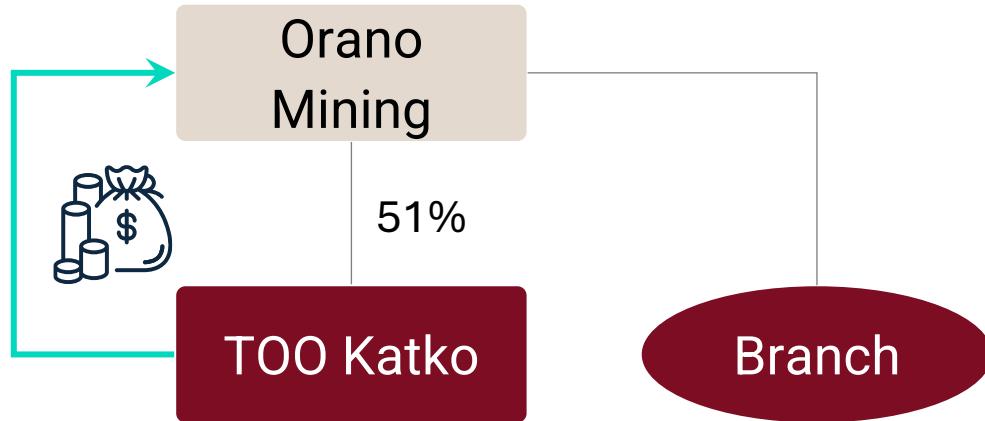
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Withholding Tax on Income of a Foreign Company with a Branch in Kazakhstan

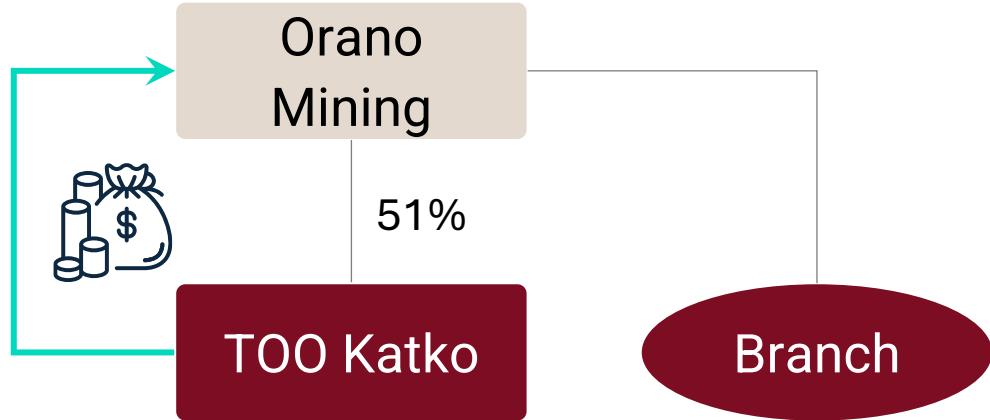
The TOO Katko Case



Case Overview:

- In 2014–2018, the Kazakhstani company (TOO "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 TOO 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. 6001-22-00-6ап/2368 dated 24 April 2023).

Conclusions



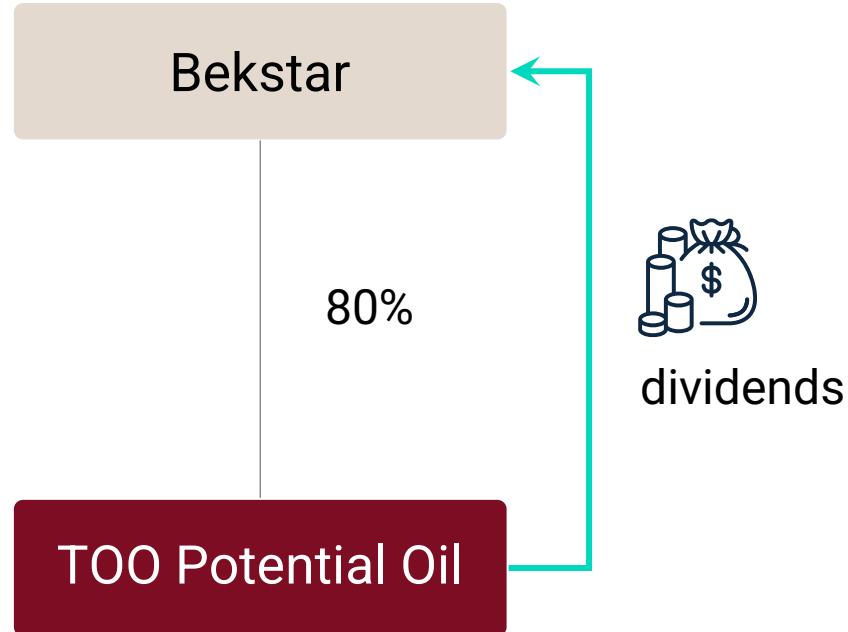
The presence of a branch in Kazakhstan may formally prevent a foreign company from applying tax treaty benefits to the income it receives from Kazakhstan.



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

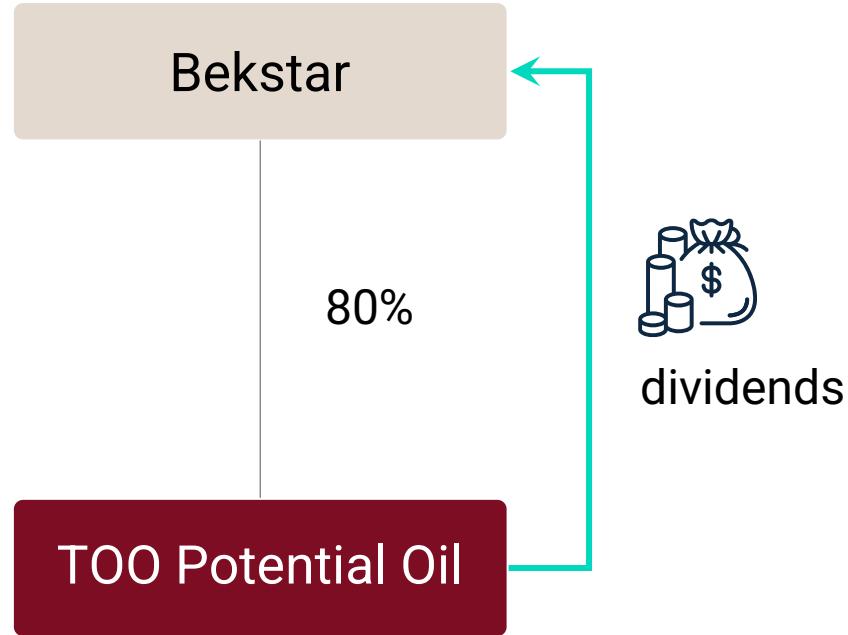
The TOO Potential Oil Case



Case Overview:

- In 2018-2022 the Kazakhstani company TOO 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. TOO 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 TOO 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. 6001-22-00-6ап/1165 dated 4 April 2023).

Conclusions



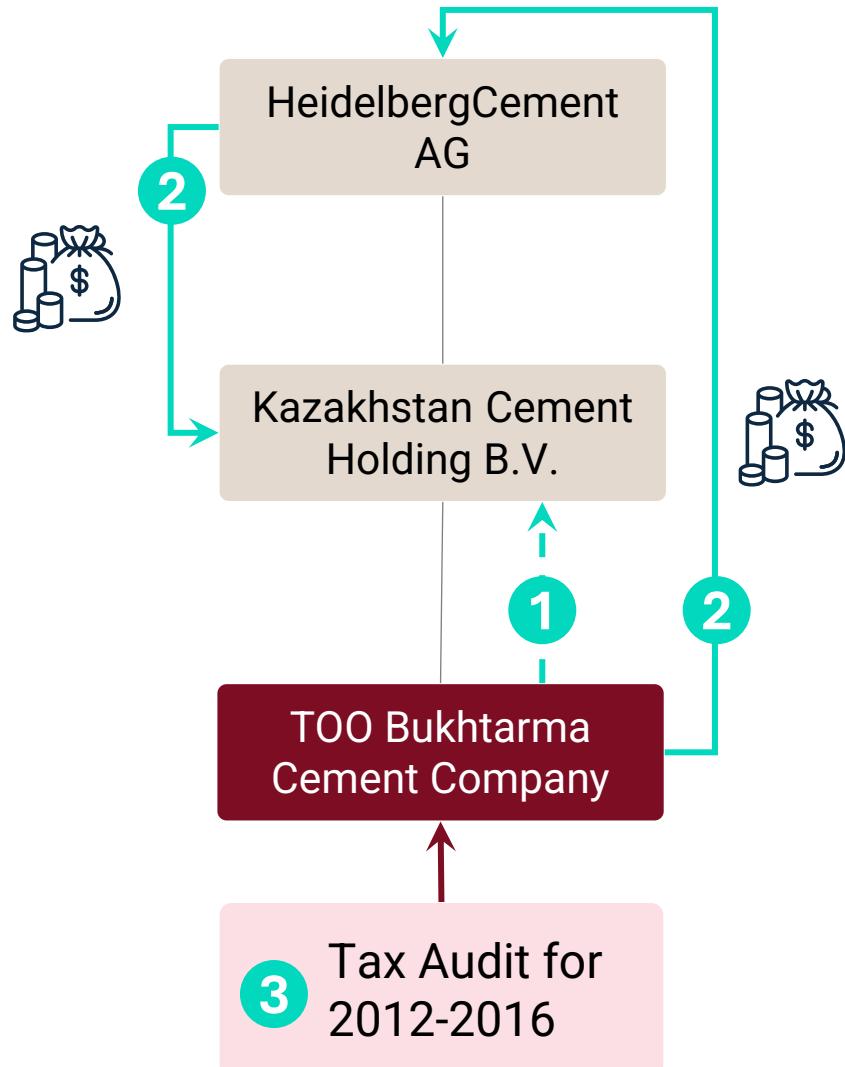
Despite challenges from the tax authorities, tax treaty benefits should apply based on tax residency, regardless whether the company is registered in another country.



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.

Tax Benefits Within the Concept of the Beneficial Owner of Income

The TOO Bukhtarma Cement Company Case

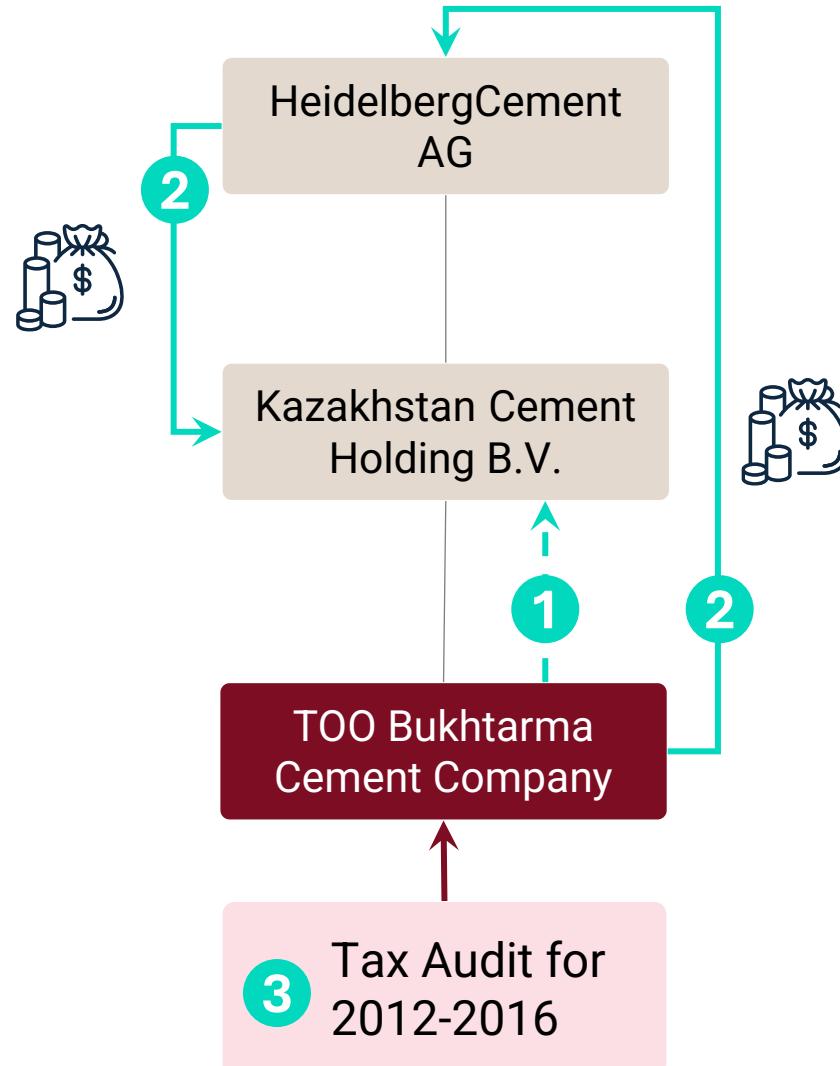


A black icon of a briefcase with a handle and a front pocket, positioned next to a gear icon.

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 TOO. 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:

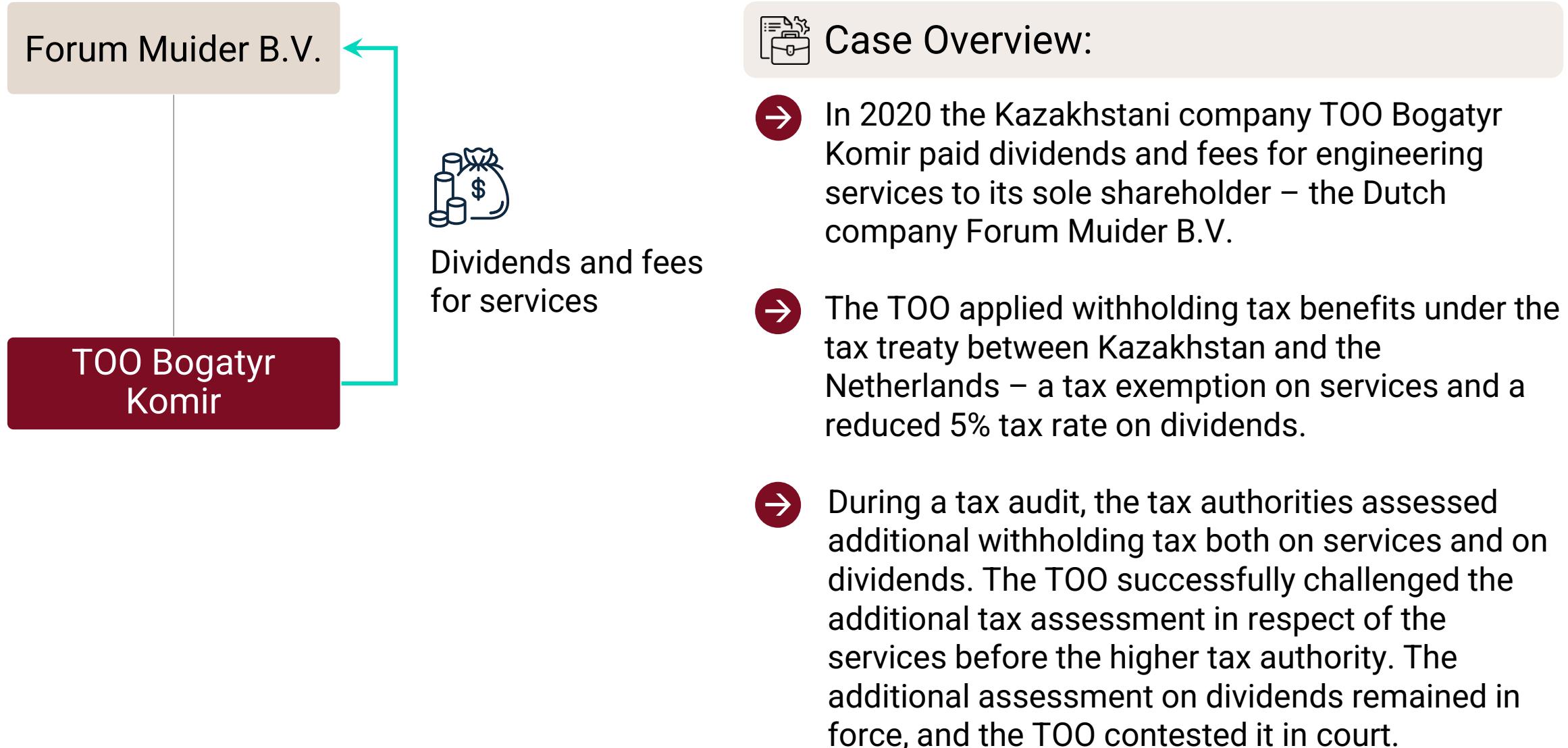
1. The existence of an international treaty;
2. The non-resident must be the ultimate beneficial owner of the income;
3. The non-resident must be a tax resident of the treaty country.

→ 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.

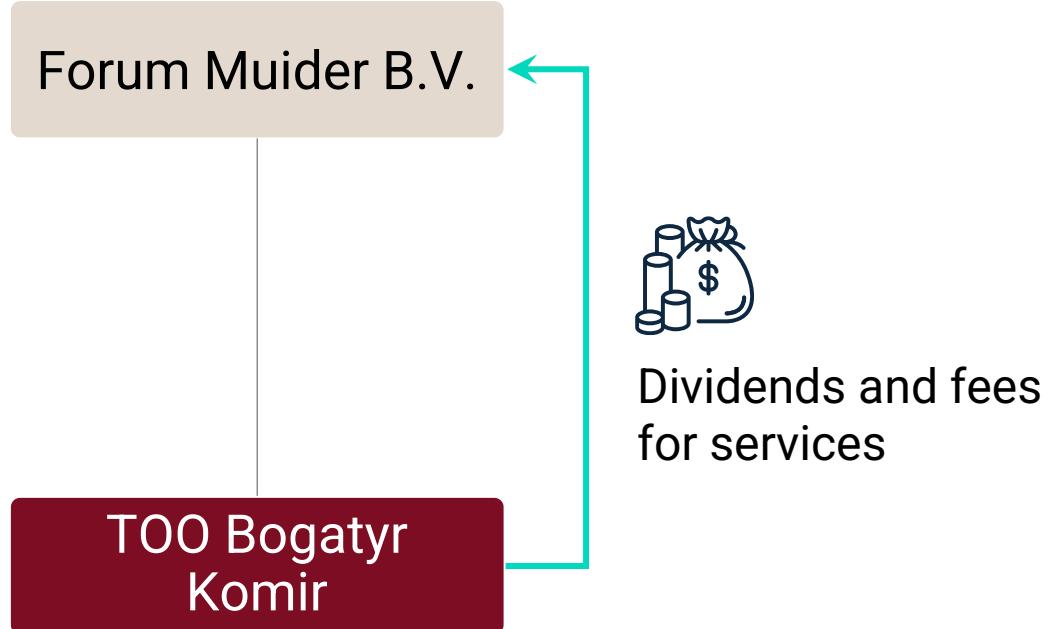


The court ruled that the withholding tax charge was unjustified (Supreme Court Ruling No. 6001-20-12-6a/56 dated 19 November 2020).

The TOO Bogatyr Komir Case



The TOO Bogatyr Komir Case

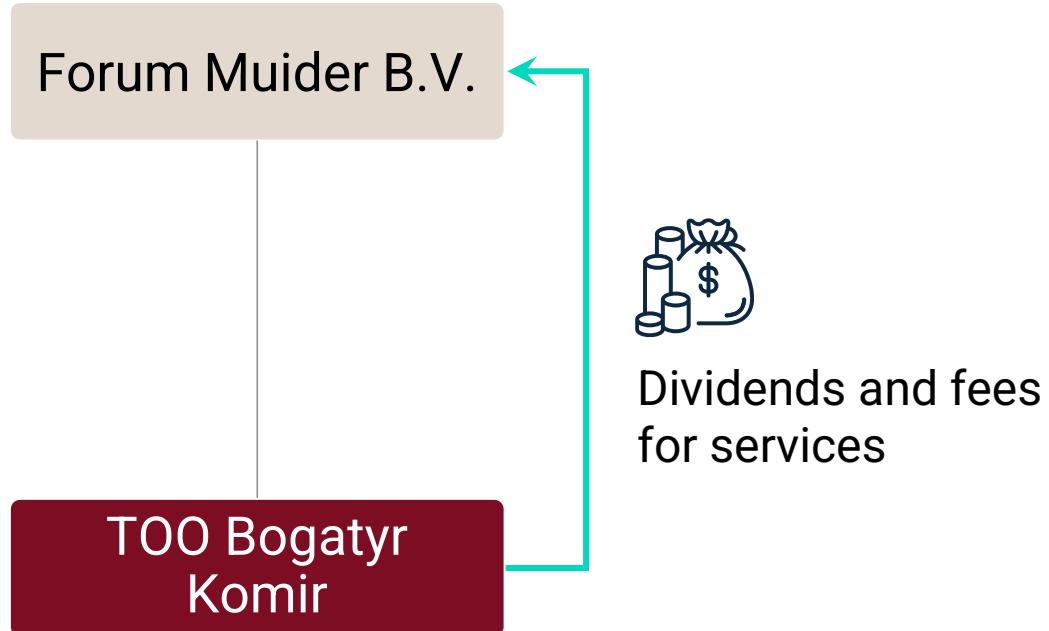


Case Overview:

→ The tax authorities justified the assessment of withholding tax on dividends by the fact that Forum Muider B.V. is not the beneficial owner due to the following:

1. The company carries out only holding activities and receives income mainly in the form of dividends;
2. The company does not conduct business activities and does not have the opportunity to do so due to the lack of employees;
3. The company's board of directors' members are also the employees of its shareholders - Russian and Kazakhstani companies;
4. Half of the received dividends are transferred to the Kazakhstani company, a shareholder of the Dutch company.

The TOO Bogatyr Komir Case



Court's Decision:

- The court of first instance supported the taxpayer and concluded that the Dutch company independently disposed of the funds received from the TOO and was the beneficial owner of the income; accordingly, it was entitled to apply withholding tax benefits.
- However, the court of appeal ruled that the Dutch company was only a formal owner of the funds received and had limited powers to dispose of the dividend income.



The court ruled that the withholding tax assessment was justified. (Resolution of the Pavlodar Region Court № 5599-25-00-4a/62 dated 3 June 2025). *The Resolution may be appealed in the court of cassation.*

Conclusions



Tax 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.



The ultimate “destination” of the income (including the “pass-through” nature of cash flows) is important but not the only factor. Other circumstances are also relevant, such as the legal right to dispose of the income, the nature of the income-receiving company’s activities (other sources of income, conduct of business activities), the number of employees, management arrangements, etc.



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

Application of the Three-Year Tax Exemption in Restructuring

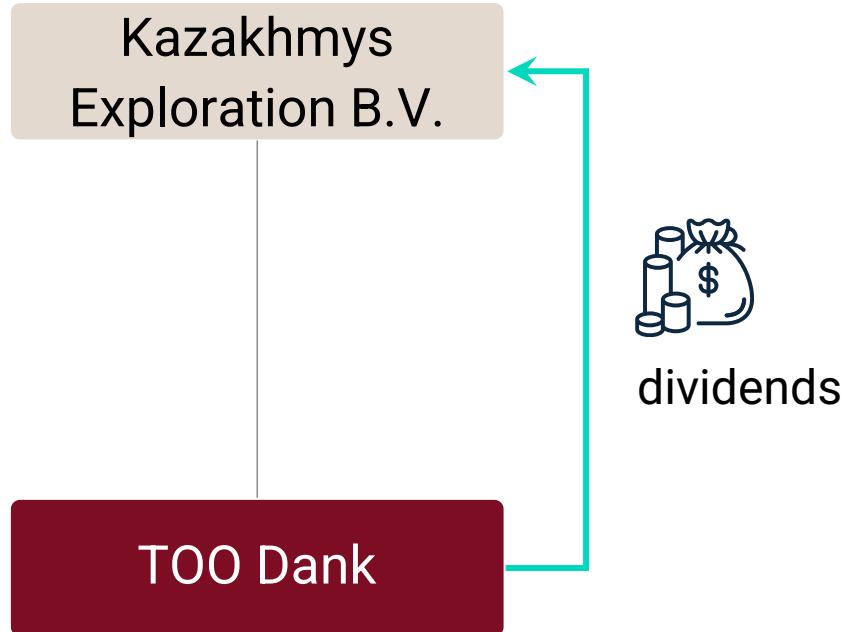
The TOO Dank Case



- 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 Charaltny LTD.
- 2 In December 2017, TOO Charaltny 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.



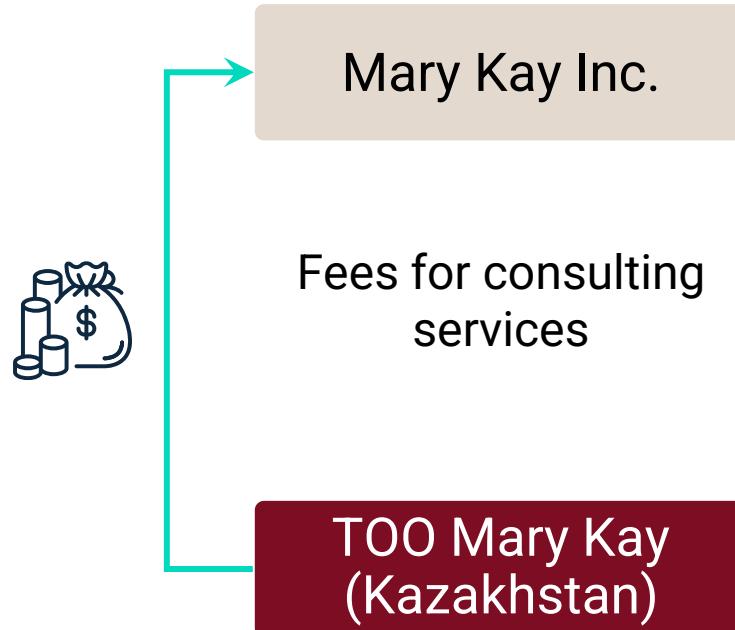
The three-year dividend exemption has been replaced by a reduced 10% withholding tax rate (compared to the standard 15%), while retaining the same rules – i.e., reorganizations and sales between companies with the same owners do not interrupt the three-year period.



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.

Disputes on Withholding Tax Benefits on Royalties

The TOO Mary Kay Kazakhstan Case



Case Overview:

- In 2018-2022 the Kazakhstani company TOO Mary Kay (Kazakhstan) paid fees for consulting services to the US company Mary Kay Inc.
- The TOO did not withhold tax based on the tax residency certificate received from the US company and the tax treaty between Kazakhstan and the USA, which provides for withholding tax exemption on payments for services.
- Following the tax audit, withholding tax was additionally assessed in respect of service fee payments made by the TOO to the US company, as the tax authority recharacterized these payments as royalties. The TOO challenged the additional assessment in court.

The TOO Mary Kay Kazakhstan Case



Mary Kay Inc.

Fees for consulting
services

TOO Mary Kay
(Kazakhstan)



Court's Decision:

→ The court upheld the classification of payments for services as royalties based on the following:

1. Under the service agreement, the American company transfers professional knowledge, experience and information;
2. The TOO agrees to comply with the terms of confidentiality and data protection;
3. Consequently, when providing services, confidential commercial information ("know-how"), which is intellectual property, is transferred.



The court supported the withholding tax assessment.
(Resolution of the Judicial Collegium for Administrative Cases of the Almaty City Court №7599-25-00-4a/933 dated 28 October 2025) *The Resolution may be appealed in court of cassation.*

The TOO METRO Cash & Carry Case



METRO AG

Payments for
services and
trademark royalties

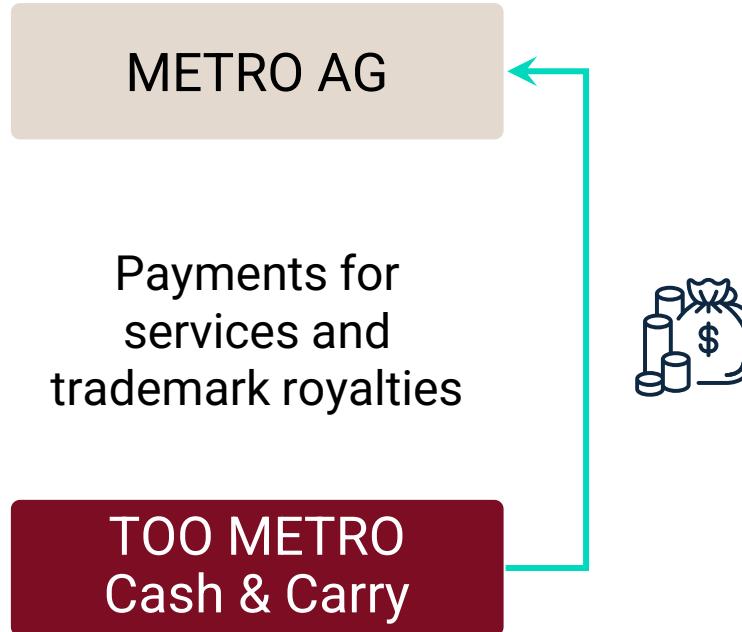
TOO METRO
Cash & Carry



Case Overview:

- In 2018 the Kazakhstani company TOO METRO Cash & Carry paid invoices of the German company of the METRO group (METRO AG) under:
 - services under framework IT services contract;
 - shared service center agreement;
 - services under framework business services agreement;
 - sublicense agreement for the use of the "METRO" trademark.
- The TOO did not withhold tax on these payments.
- Following a tax audit, all payments (IT services, shared service center services, and business services) were classified as royalties, and withholding tax at the rate of 15% was assessed. The TOO challenged this decision in court.

The TOO METRO Cash & Carry Case



Court's Decision:

→ The court sided with the tax authority regarding the classification of payments under two contracts:

- Under the IT services contract, software and databases were provided, so the entire remuneration under this contract (including the main part – for adaptation and modification of IT products) should be recognized as royalties.
- Payments under the shared service center contract are also royalties, as this contract involved the transfer of rights to use software and software components.

The TOO METRO Cash & Carry Case

METRO AG

Payments for
services and
trademark royalties

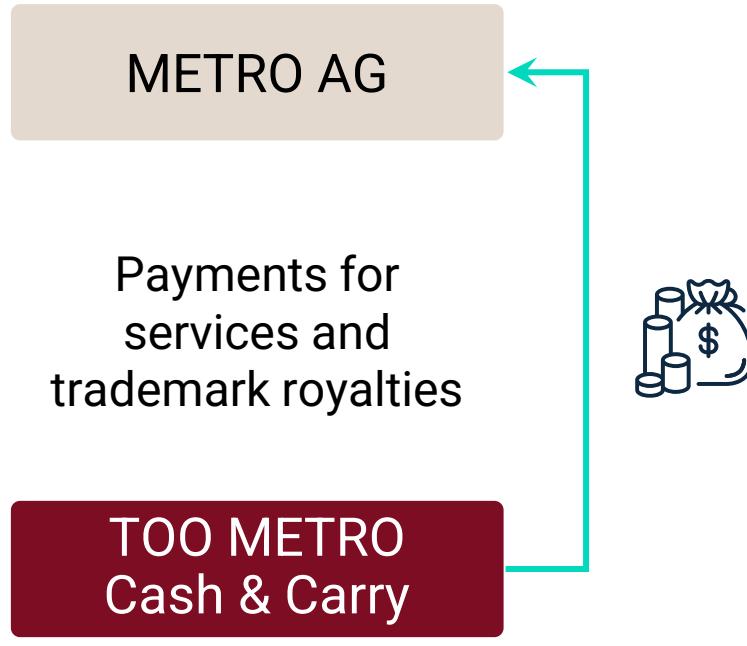
TOO METRO
Cash & Carry



Court's Decision:

- However, the court did not uphold the argument regarding the classification of payments under the business services agreement as royalties, since the description, procedure, terms of provision, as well as the results of these services did not correspond to the definition of royalties.
- At the same time, the court ruled that for payments qualified as royalties, the reduced rate under the tax treaty between Kazakhstan and Germany of 10% should apply.
- The court's ruling emphasizes that it is contradictory to classify payments as royalties under a tax treaty and to not apply the reduced withholding tax rate provided for in the treaty.

The TOO METRO Cash & Carry Case



Court's Decision:



Positions of the TOO, the tax authority, and the court's final decision, broken down by contract:

Services under	TOO	Tax Auth.	Court
IT services contract	no	15%	10%
Business services agreement	no	15%	no
Shared service center agreement	no	15%	10%



The court canceled part of the additional assessments and applied the preferential withholding tax rate to royalties (Resolution of the Judicial Collegium for Administrative Cases of the Almaty City Court No. 7599-24-00-4a/838 dated 18 September 2024).

Conclusions



The court practice shows that payments for services to foreign counterparties may be classified as royalties, which leads to additional withholding tax assessment.



Contracts that, in addition to the provision of services, provide for the granting of rights to intellectual property (software, databases) and confidential commercial information (considered as "know-how") are at particular risk.



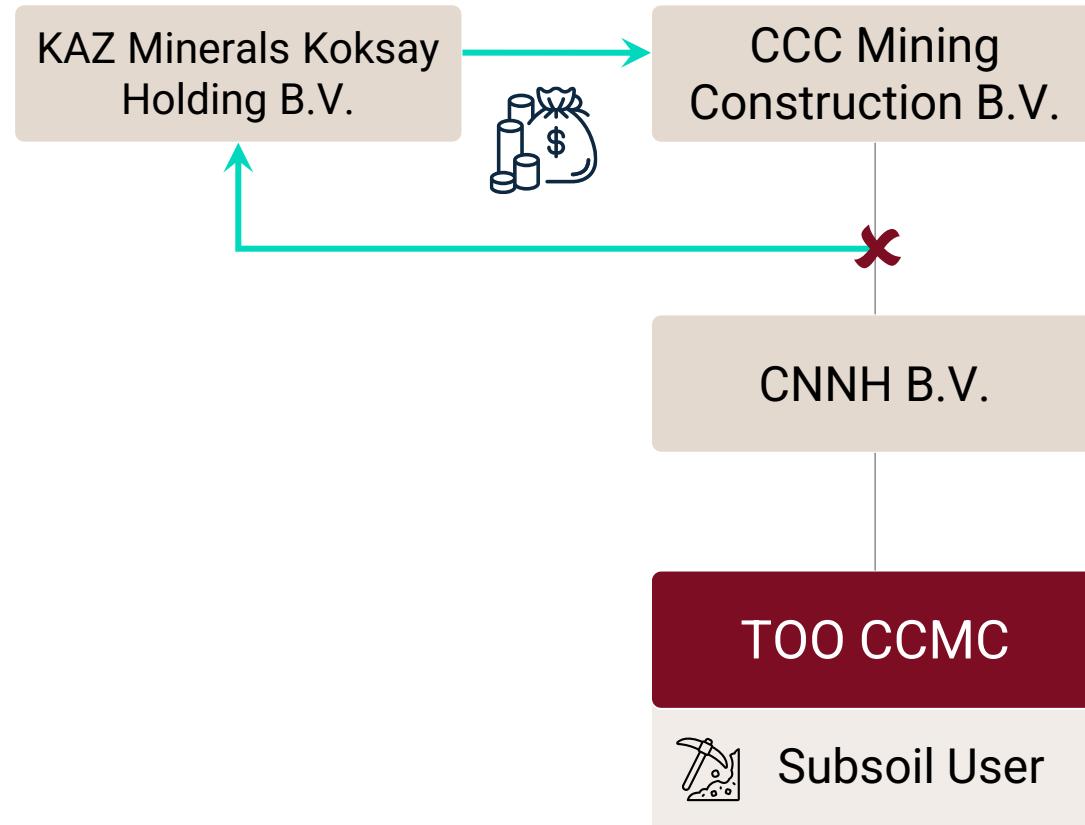
Court practice remains inconsistent: in some cases, taxpayers successfully defend the classification of payments as services, while in others, courts uphold the classification as royalties. The position on the tax rate is also ambiguous: sometimes the base rate (15%) is applied, while in other cases, courts uphold the application of the preferential rate under tax treaties (10%).



It is also worth noting that, as of 2026, changes have been made to the tax legislation: if royalties are separately indicated in the contract for the provision of technical support and maintenance services, then the withholding tax is applied only to this part; if not, then to all income under the contract (clause 5, article 683 of the Tax Code of the Republic of Kazakhstan).

Tax Consequences of Transactions with Subsoil User Companies

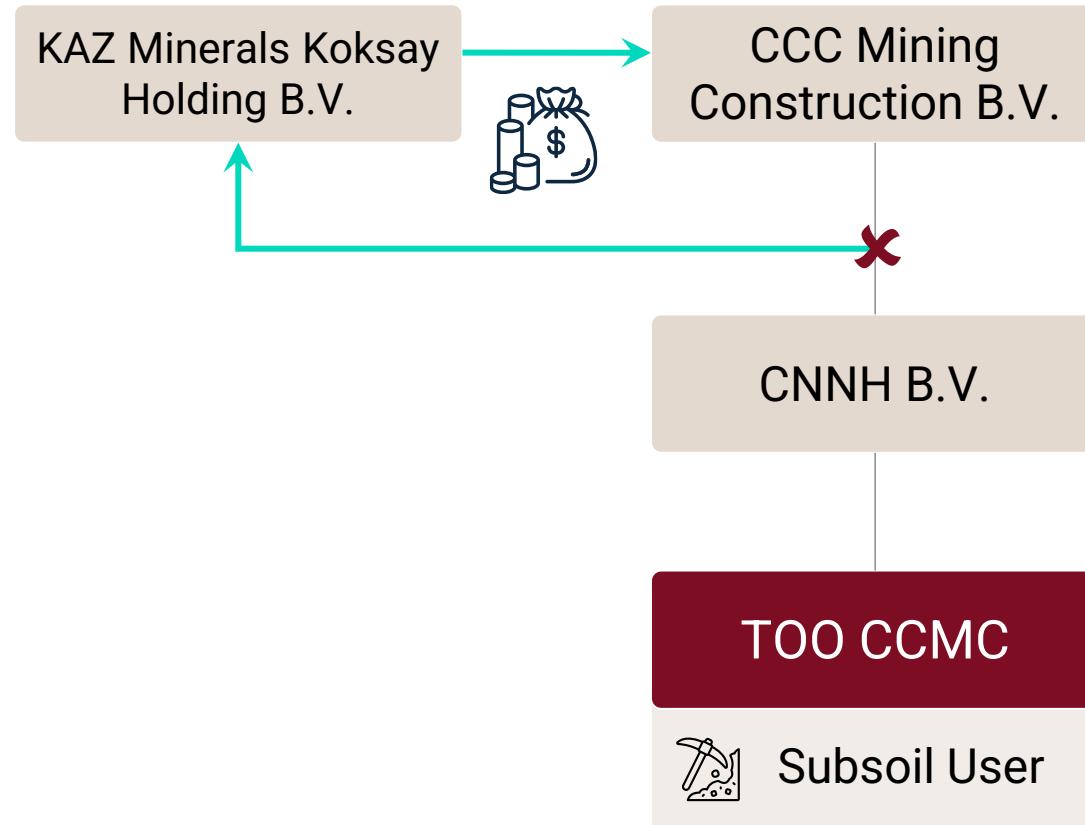
The CCC Mining Construction B.V. Case



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.

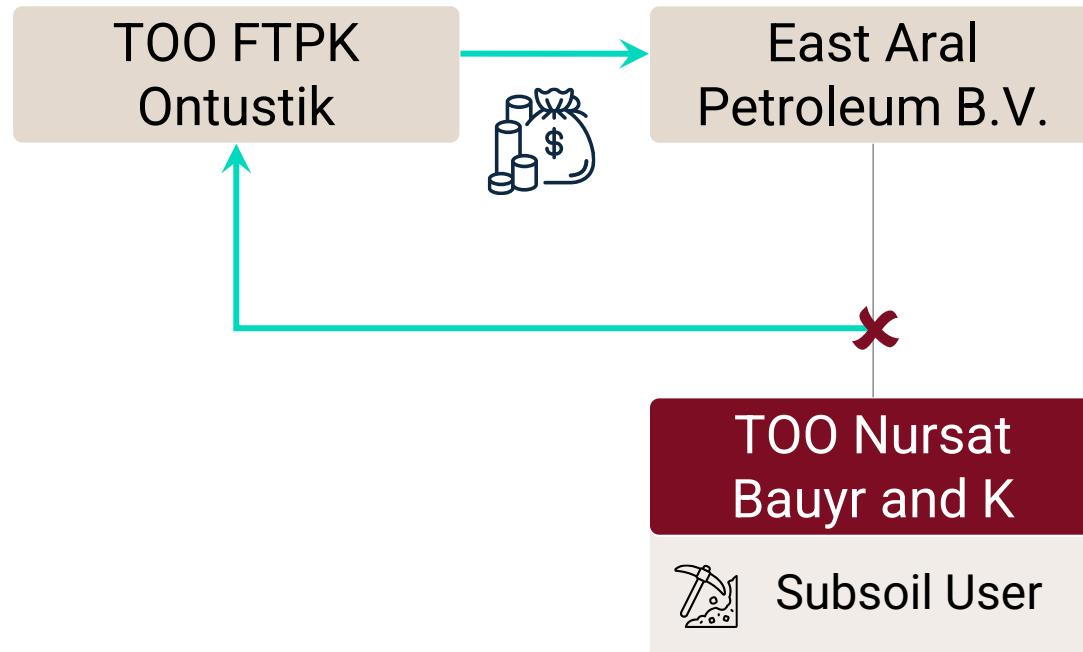


→ However, the Supreme Court overturned these decisions and ruled that the withheld tax could not be refunded.



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).

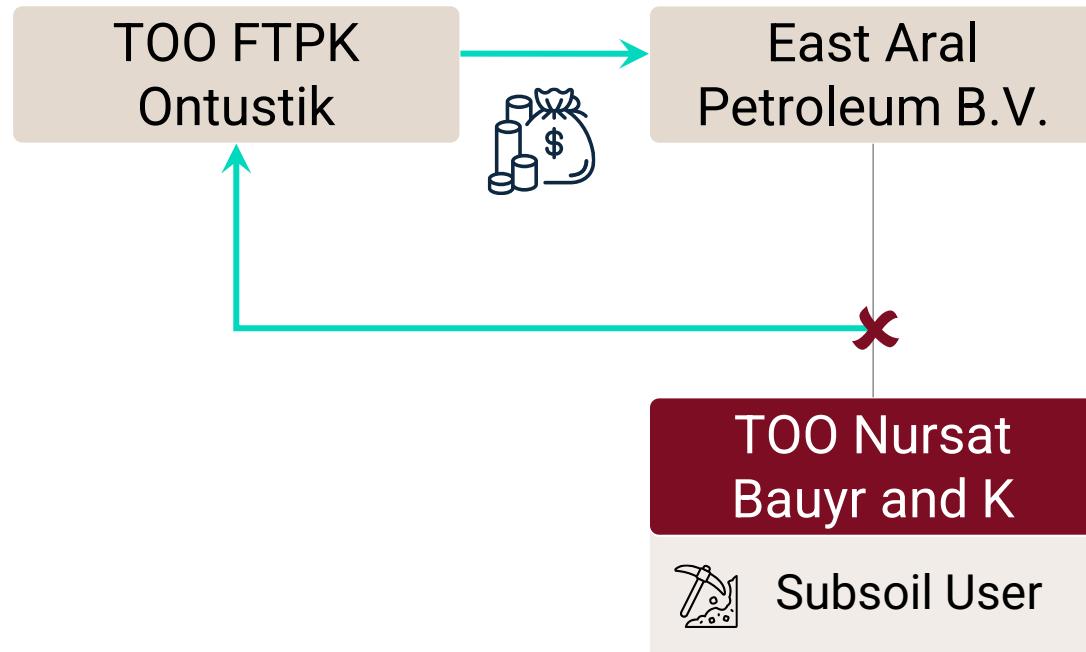
The East Aral Petroleum B.V. Case



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

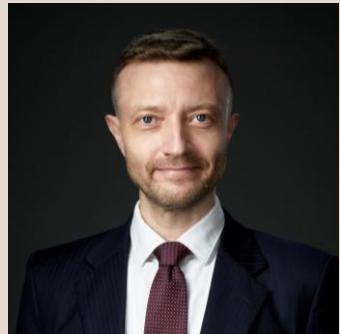


The sale of a subsoil user company is subject to withholding tax in Kazakhstan.



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 us

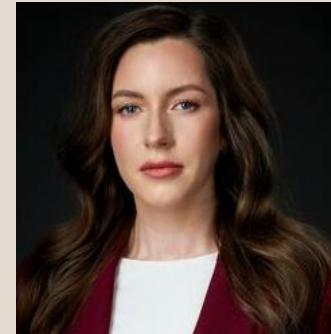


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