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

## OVERVIEW OF LANDMARK TAX DISPUTES

JULY 2026

GLOBAL AIM

# Contents

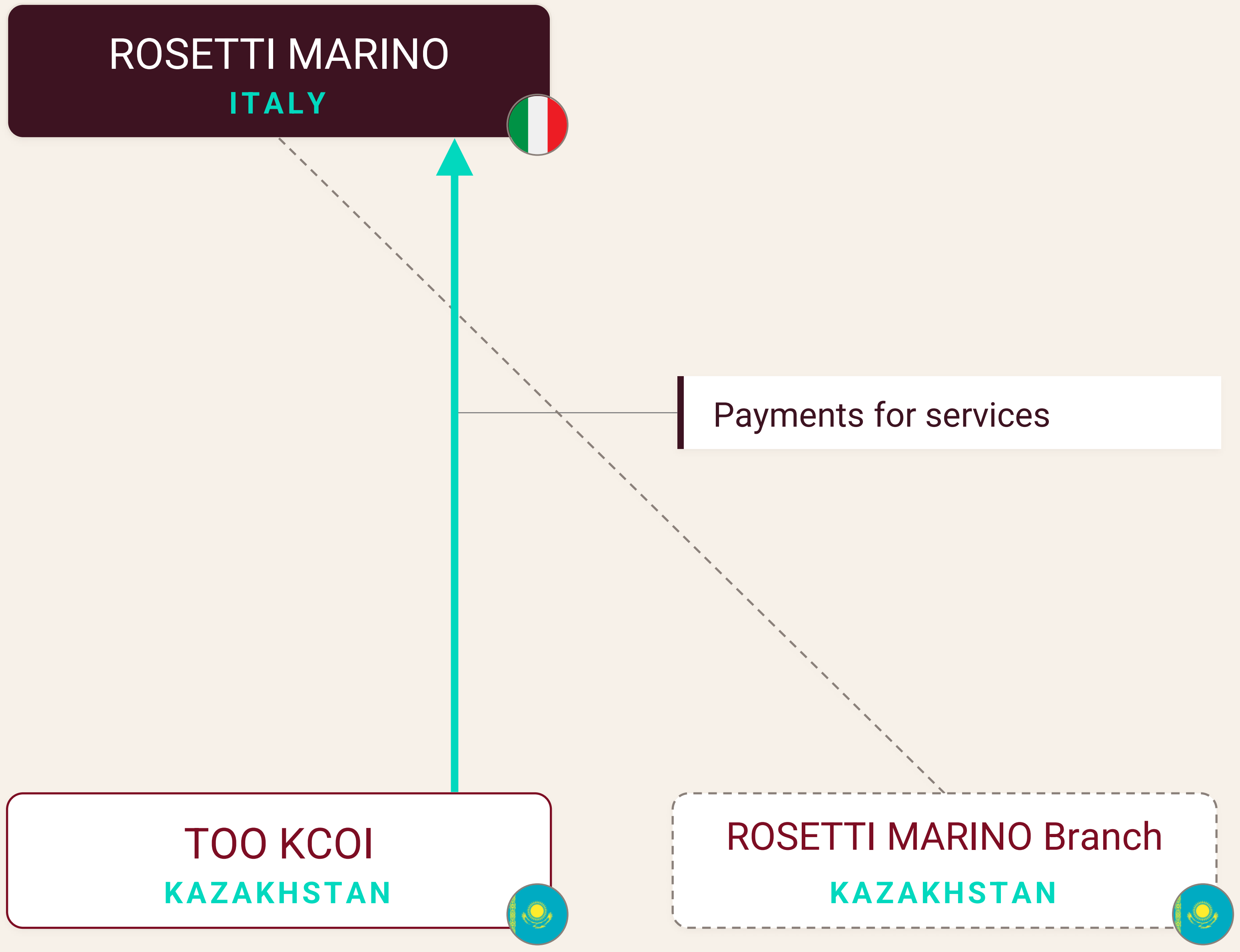
# 01 Withholding Tax on Income of a Foreign Company with a Branch in Kazakhstan

THE ROSETTI MARINO S.P.A. CASE

THE TOO KATKO CASE

# The ROSETTI MARINO S.p.A. Case

STRUCTURE AND CASH FLOWS




## CASE OVERVIEW

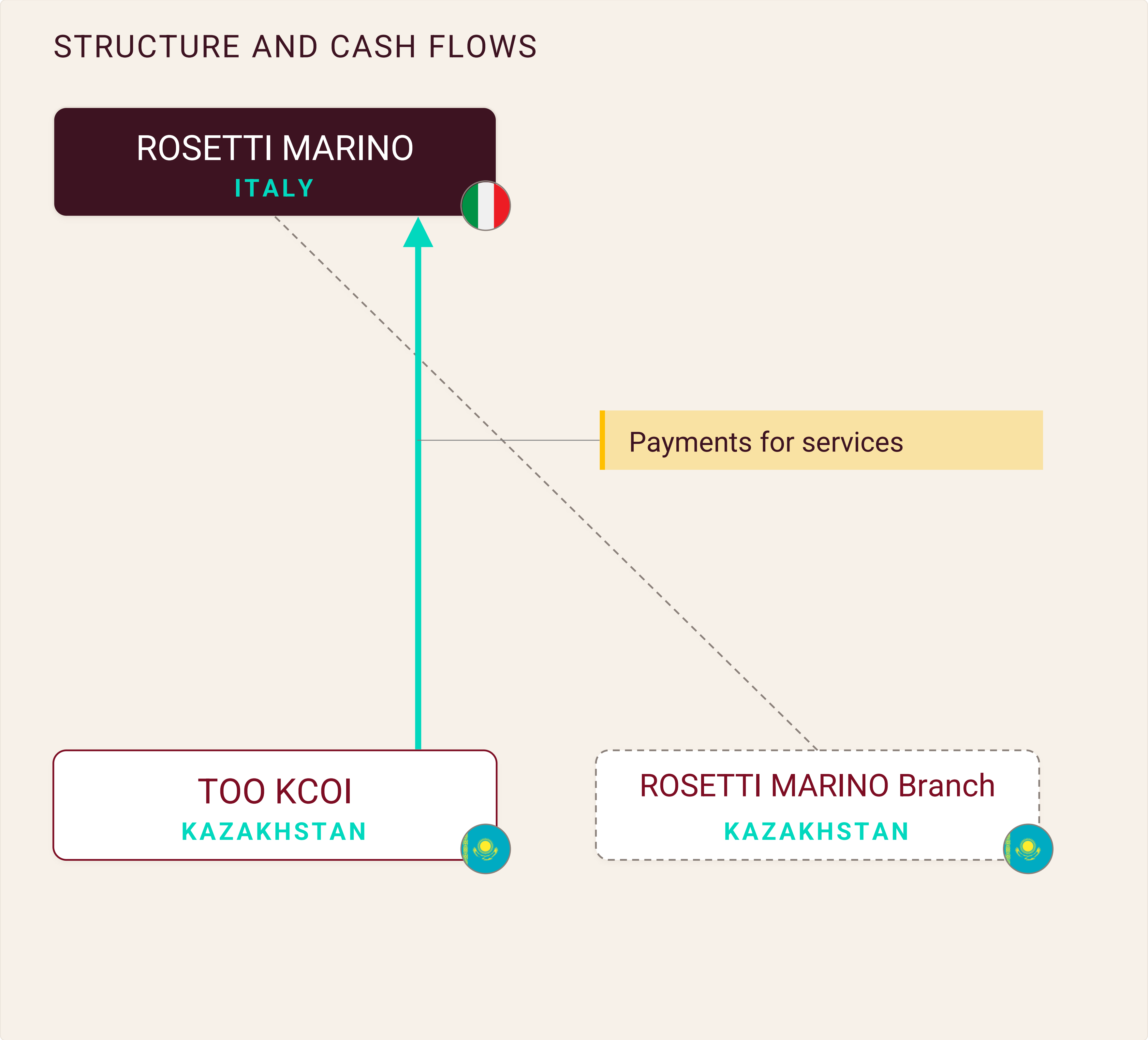
Since 2009, the Italian company ROSETTI MARINO S.p.A. had provided the Kazakhstani company TOO Kazakhstan Caspian Offshore Industries (TOO KCOI) with design, installation, and technical assistance services for oil and gas facilities. In 2018, ROSETTI MARINO S.p.A. registered a branch in Kazakhstan.

Withholding tax was withheld on the service income for 2018-2020. In November 2022, ROSETTI MARINO S.p.A. filed claims for a refund of the withheld tax. In the company's view, under the Kazakhstan-Italy tax treaty no withholding tax was due in Kazakhstan, since the services were provided by the head office in Italy, while the Kazakhstani branch had only a small administrative staff.

## POSITION OF THE TAX AUTHORITIES

The tax authorities denied the refund: the presence of a branch automatically means that the income is attributed to it and subject to withholding tax. The authorities additionally relied on the expiry of the 3-year limitation period.

# The ROSETTI MARINO S.p.A. Case




**COURT'S DECISION**

The courts of first instance and appeal upheld the tax authorities' position attributing the company's income to its Kazakhstani branch and denied the refund.

The court of cassation set aside the appeal ruling and remanded the case, noting that:

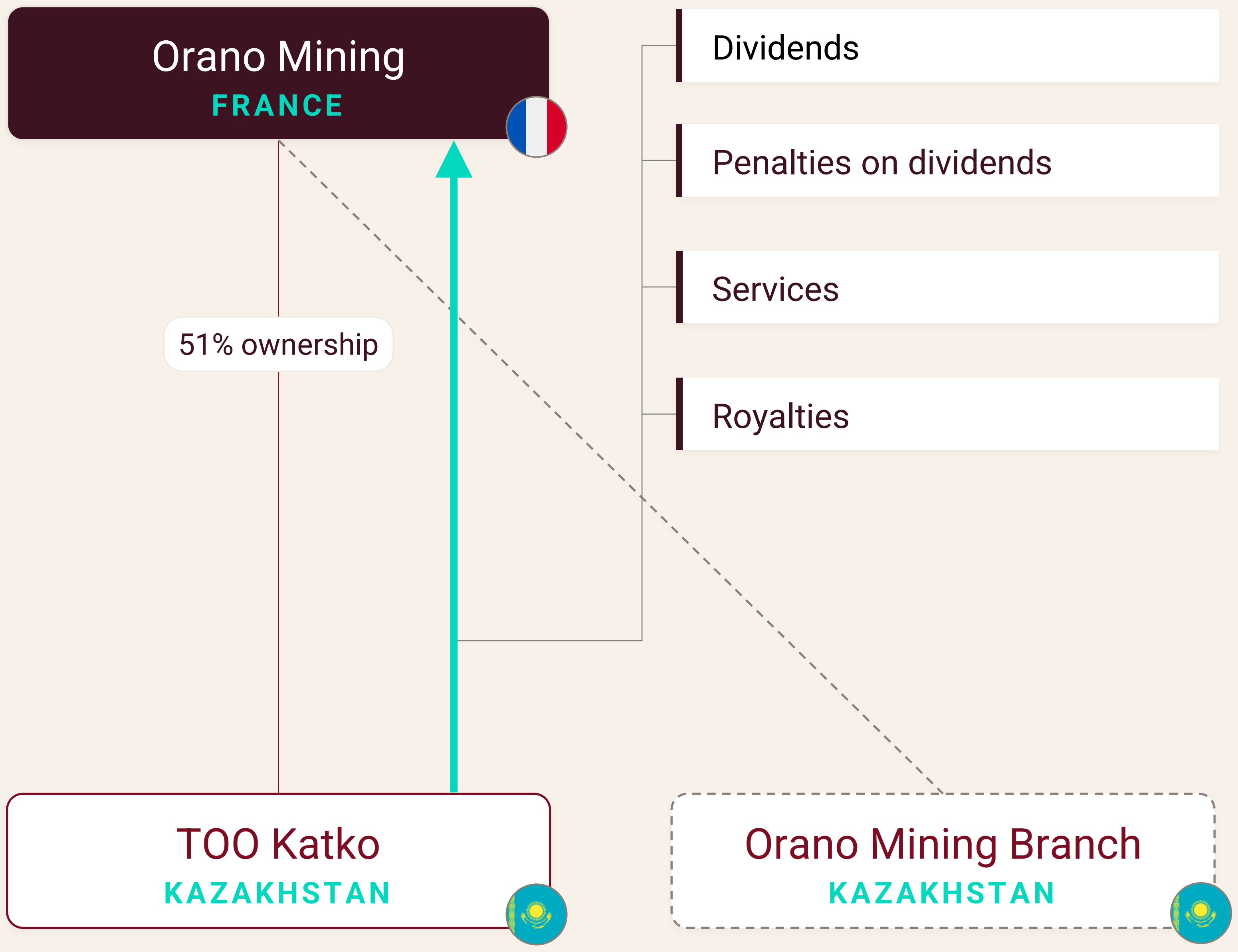
- it had not been established whether the activities of the Company and the branch coincided;
- TOO KCOI had not been joined to the case;
- no analysis had been carried out for each transaction and period separately.

> The cassation court remanded the case for reconsideration – the outcome is not yet known.

Ruling of the Cassation Court of the Republic of Kazakhstan No. 6003-25-00-4к/249 dated 22 October 2025.

# The TOO Katko Case

STRUCTURE AND CASH FLOWS




## 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.

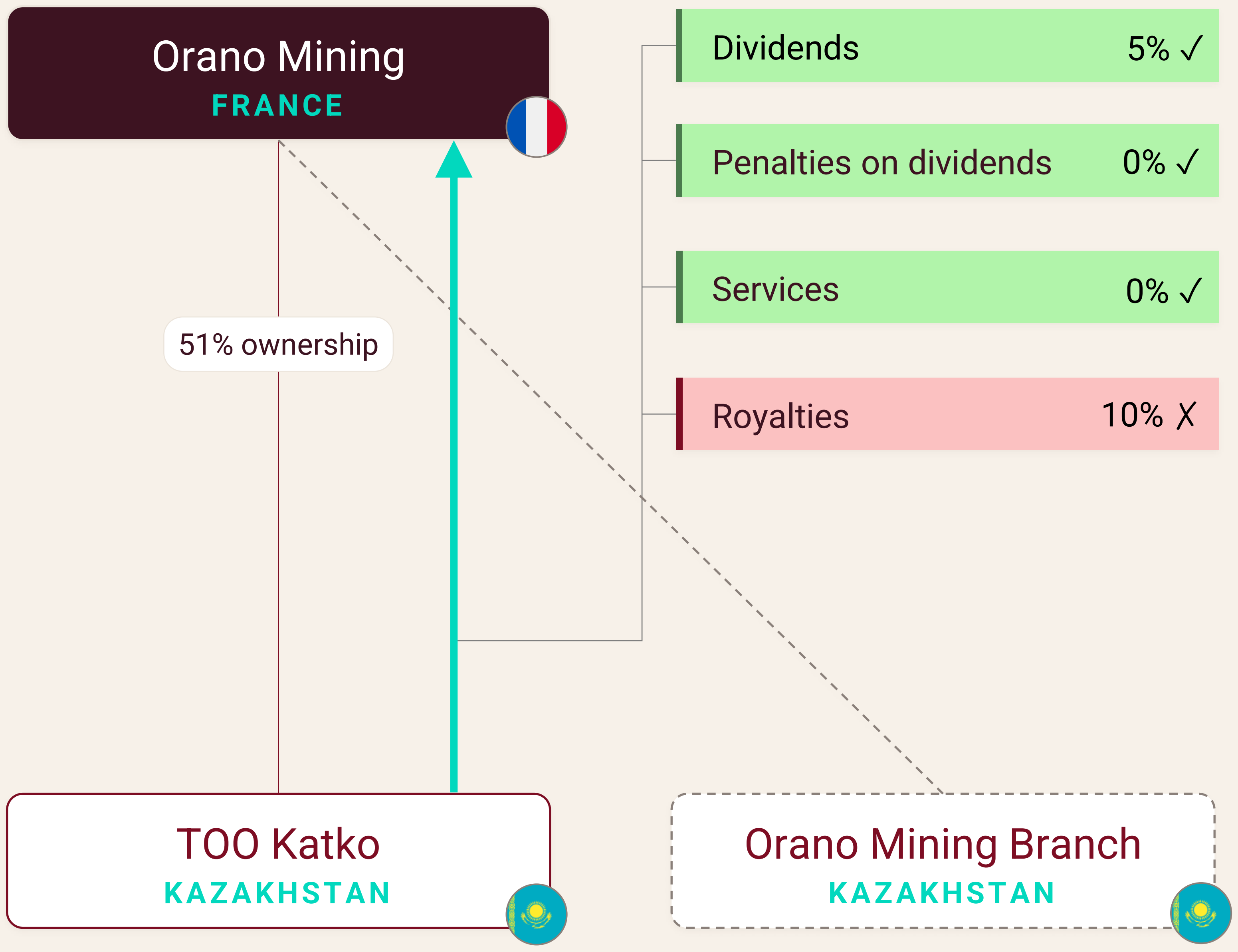
Tax treaty benefits were applied to these payments: an exemption for services and penalties, 5% on dividends, and 10% on royalties (with the royalty tax withheld 'at the expense of the tax agent').

## POSITION OF THE TAX AUTHORITIES

During a tax audit, the tax authorities challenged the treaty benefits due to the parent company's branch presence in Kazakhstan. Additional tax was assessed on dividends, penalties, and services at 20%, and on royalties at 15%.

# The TOO Katko Case

## STRUCTURE AND CASH FLOWS




## COURT'S DECISION

The Supreme Court upheld treaty benefits for three of the four income types: dividends, penalties on them, and services. The branch did not bar the treaty, as the services and dividends were unrelated to it; it had no production staff and only three employees (a director, a finance director, and an office manager); and the penalties were not dividends and were set at a market level.

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

> The court upheld the withholding tax benefits for three of the four types of income.

Supreme Court Ruling No. 6001-22-00-6ап/2368 dated 24 April 2023.

# Conclusions

## KEY RISK

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

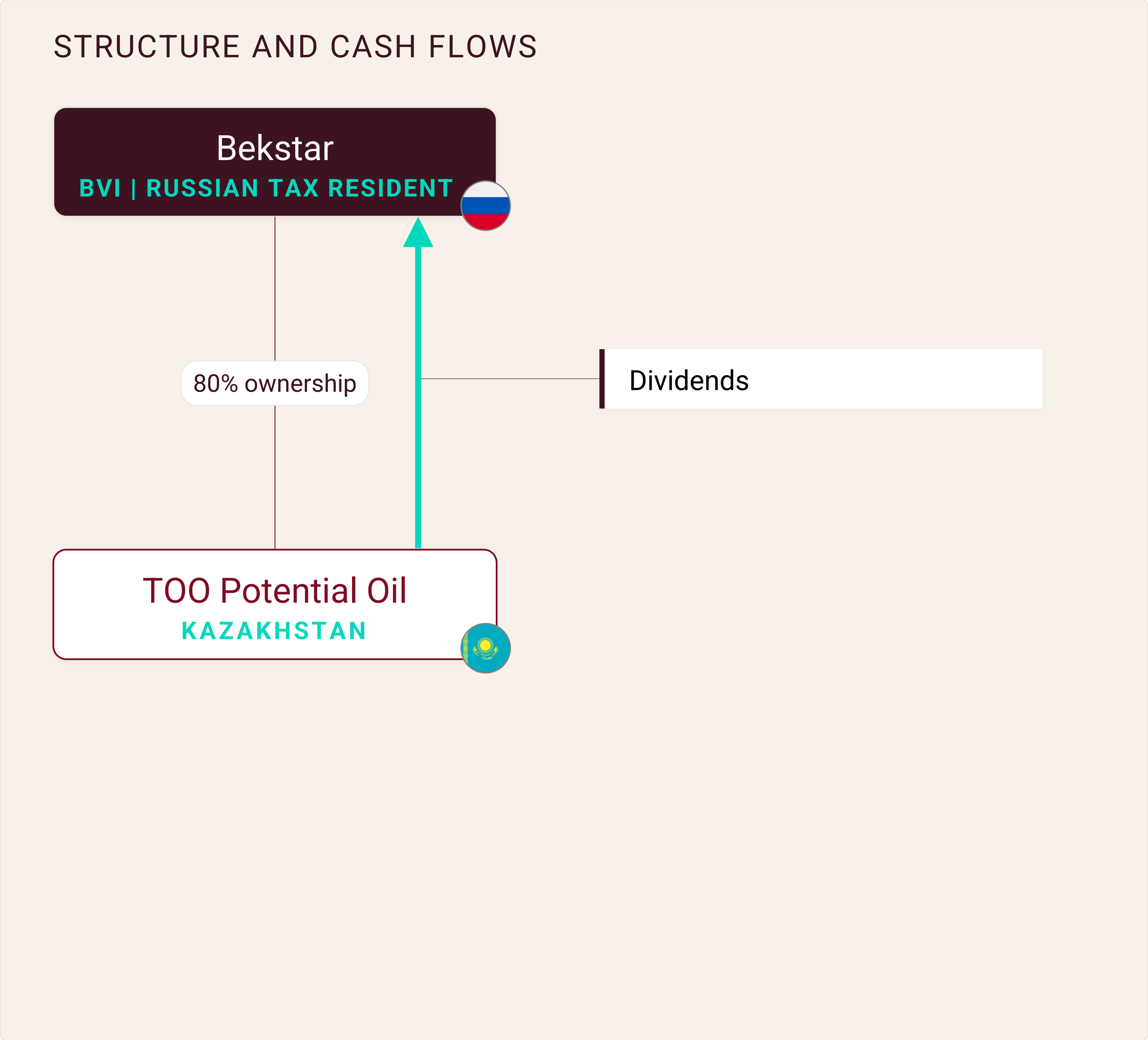
## FAVORABLE CASE LAW

Nevertheless, there are favorable precedents where the courts confirm the applicability of withholding tax benefits to payments that are not attributable to the branch. However, the risks in structures with Kazakhstani branches of foreign companies remain.

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

THE TOO POTENTIAL OIL CASE

# The TOO Potential Oil Case




## CASE OVERVIEW

In 2018-2022, TOO Potential Oil distributed dividends to its parent company Bekstar (which held an 80% interest in the TOO).

Bekstar was originally registered in the BVI. In 2017, it established a branch in Russia and became a Russian tax resident.

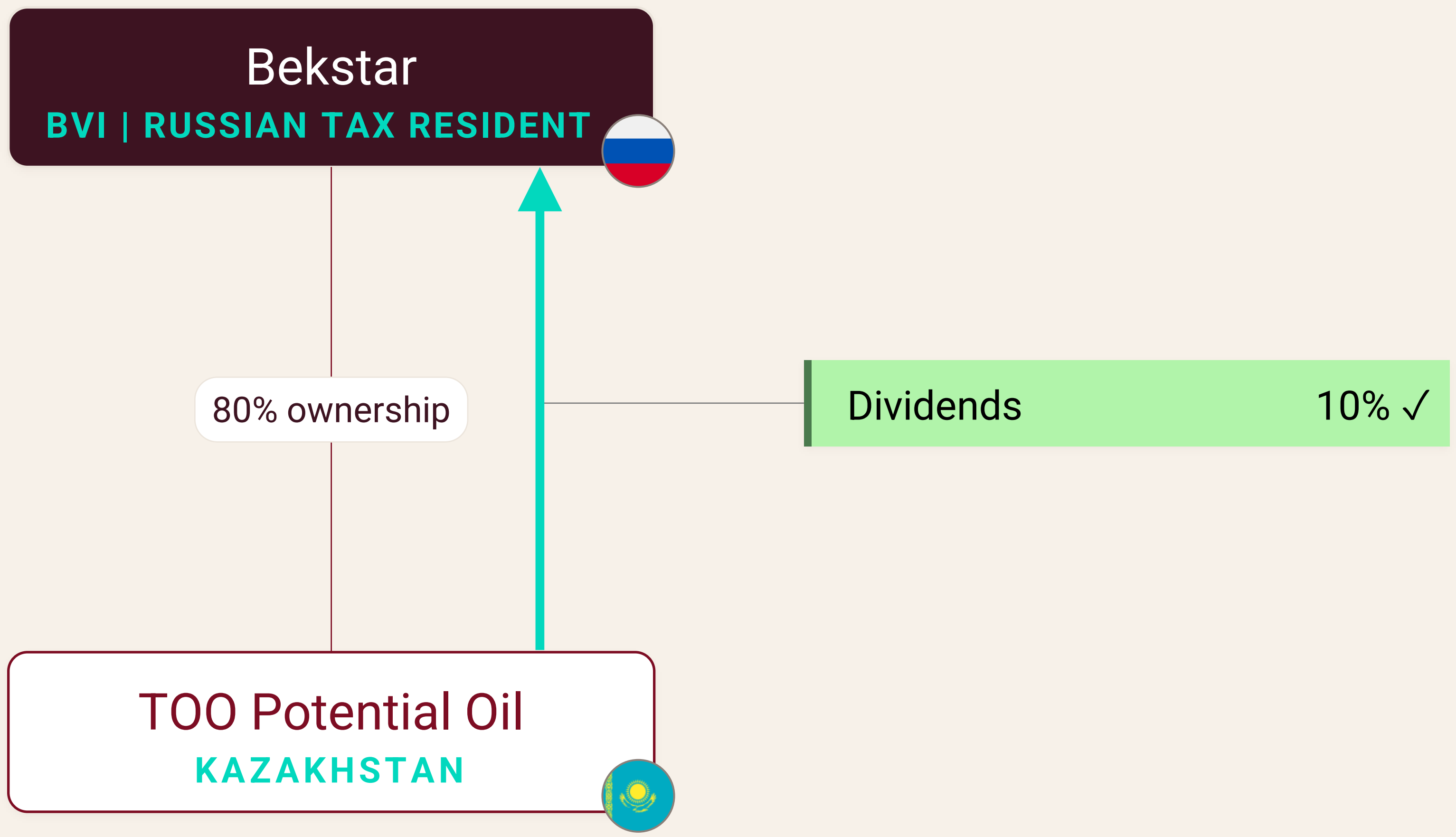
When paying the dividends, TOO Potential Oil applied a 10% withholding tax rate under the Kazakhstan-Russia tax treaty.

## POSITION OF THE TAX AUTHORITIES

During a tax audit, the reduced rate was challenged. Withholding tax was assessed at 20% on the basis that the recipient of the dividends was registered in a 'black-list' country, so the benefit was not applicable. The TOO challenged the tax authorities' conclusions in court.

# The TOO Potential Oil Case

STRUCTURE AND CASH FLOWS




**COURT'S DECISION**

The Supreme Court upheld the application of the benefits under the treaty with Russia, since Bekstar confirmed its tax residency. The court found that the fact that residency arose due to the presence of a branch in Russia (to which the dividends were paid) did not affect Bekstar's right to claim treaty benefits.

The court also noted that the tax benefits (a 0% rate) in Russia on the dividends received do not prevent the application of the treaty benefits.

The court upheld the 10% withholding tax rate under the treaty between Russia and Kazakhstan.

Supreme Court Ruling No. 6001-22-00-6ап/1165 dated 4 April 2023.

# Conclusions

## APPLYING BENEFITS BASED ON RESIDENCY

Applying tax treaty benefits based on tax residency is justified, regardless of the company's country of registration. Despite possible claims from the tax authorities, this position is consistently upheld by the courts where residency is properly confirmed.

## EXEMPTION IN THE RECIPIENT'S COUNTRY

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

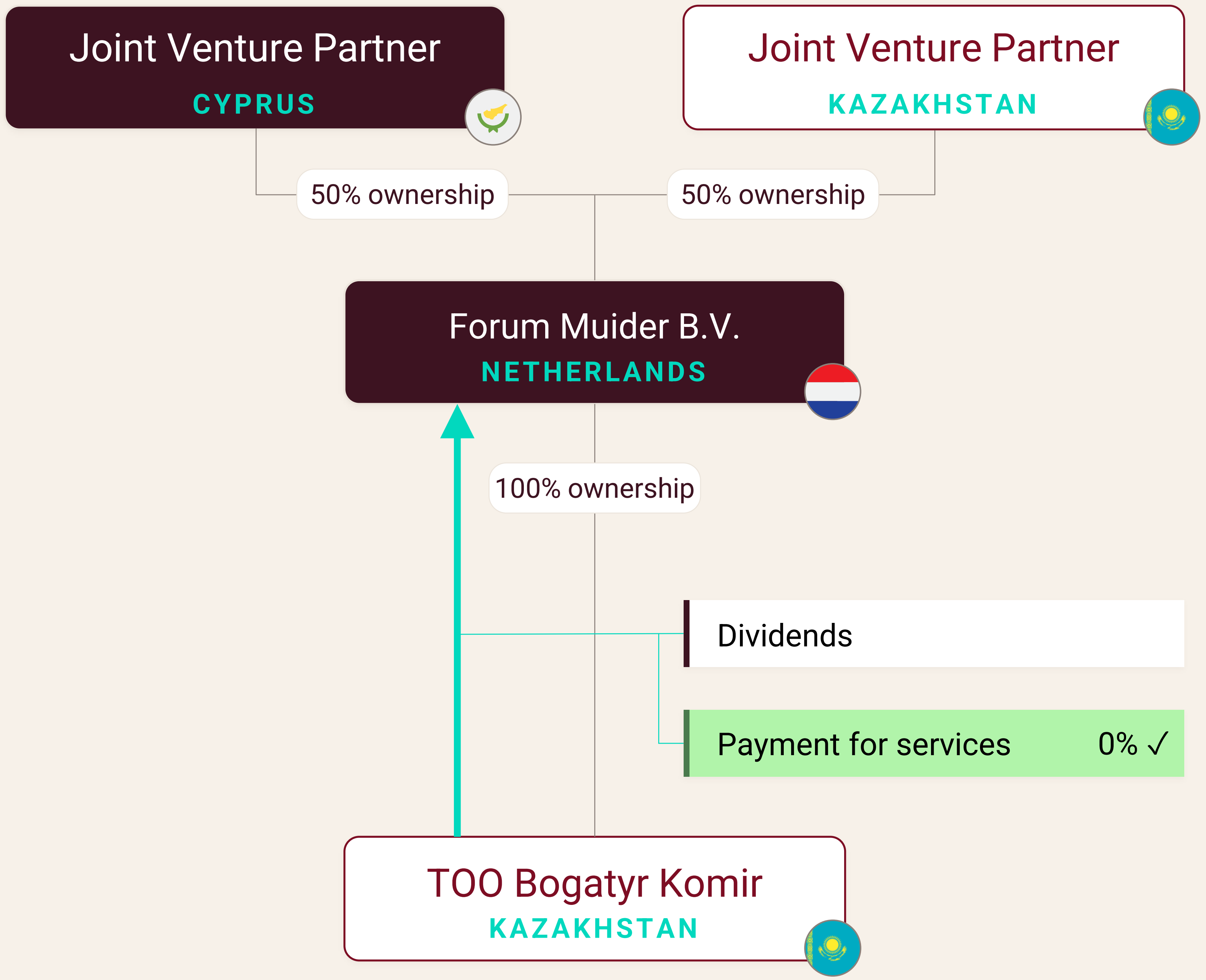
# 03 Withholding Tax Benefits: The Beneficial Owner of Income Rules

THE TOO BOGATYR KOMIR CASE

THE TOO BUKHTARMA CEMENT COMPANY CASE

# The TOO Bogatyr Komir Case

STRUCTURE AND CASH FLOWS




## CASE OVERVIEW

In 2020, TOO Bogatyr Komir paid dividends and fees for engineering services to its sole shareholder – the Dutch company Forum Muider B.V.

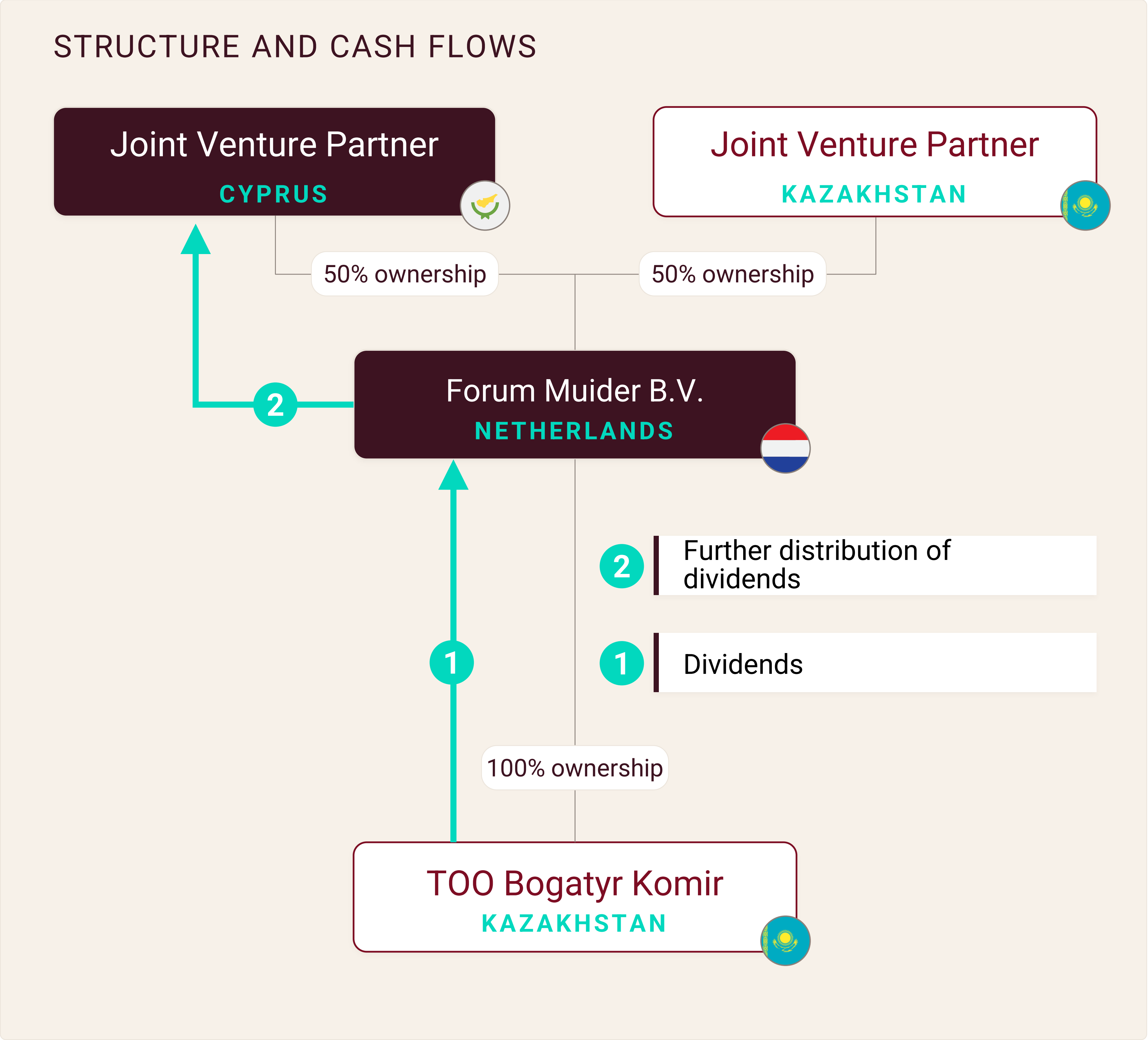
The TOO applied benefits under the Kazakhstan-Netherlands tax treaty: an exemption from withholding tax on services and a 5% rate on dividends.

## POSITION OF THE TAX AUTHORITIES

During the audit, the tax authorities assessed withholding tax on both services and dividends. The TOO successfully challenged the assessment on services before the higher tax authority.

The assessment on dividends remained in force, and the TOO challenged it in court.

# The TOO Bogatyr Komir Case




## ARGUMENTS OF THE TAX AUTHORITIES

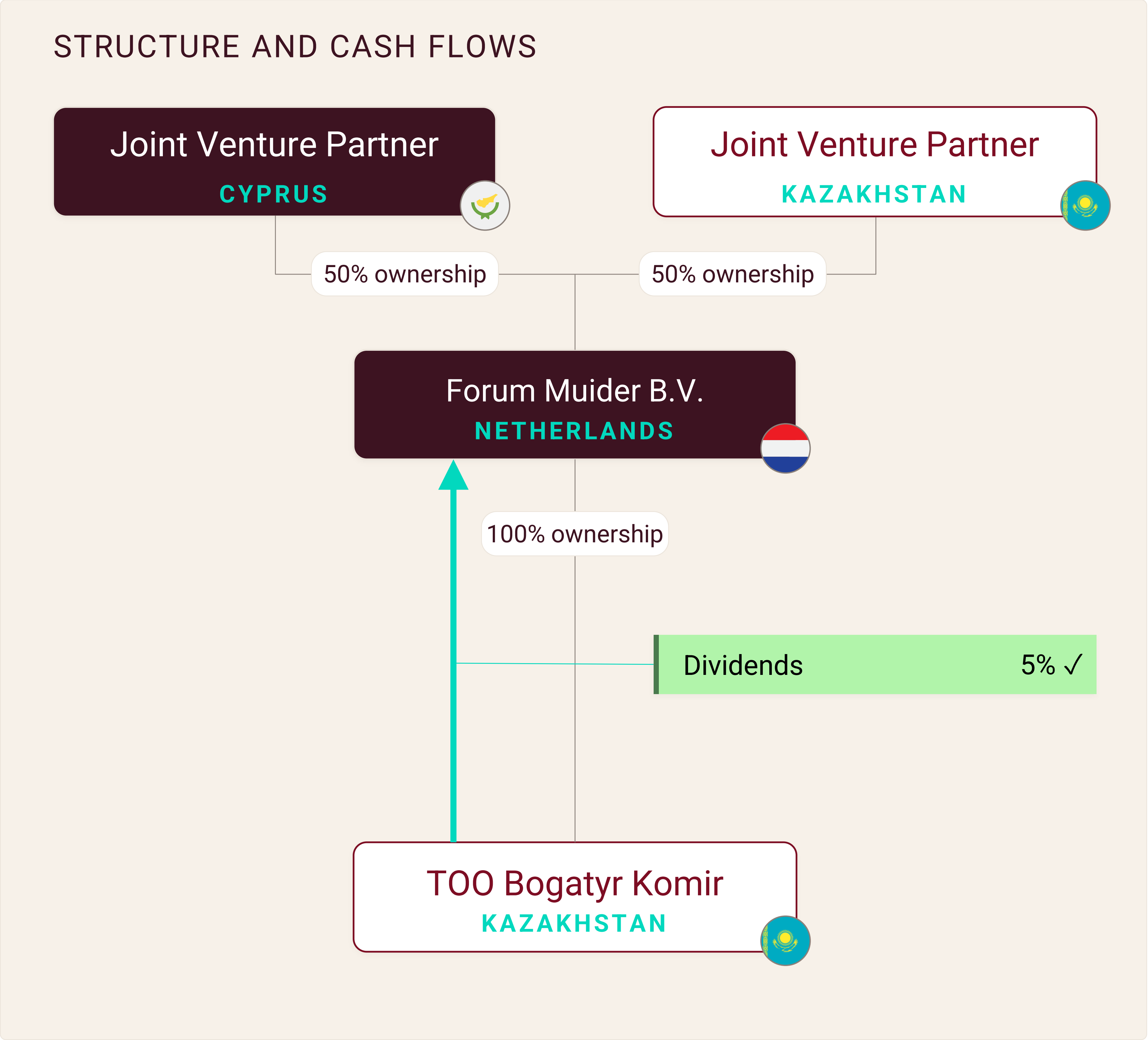
The tax authorities justified the assessment of withholding tax on dividends on the grounds that Forum Muider B.V. is not their beneficial owner, because:

- the company carries out only holding activities and receives income mainly in the form of dividends;
- it does not conduct business activities and is unable to do so due to the lack of employees;
- the members of the company's board of directors are also employees of its ultimate shareholders – Russian and Kazakhstani companies;
- half of the dividends received are transferred to the Kazakhstani company, a shareholder of the Dutch company.

## DECISION OF THE COURT OF FIRST INSTANCE

The court of first instance supported the taxpayer and concluded that the Dutch company independently managed the funds received from the TOO and was the beneficial owner of the income, and therefore was entitled to apply the withholding tax benefits.

# The TOO Bogatyr Komir Case




## DECISIONS OF THE HIGHER COURTS

The court of appeal ruled that the Dutch company was the formal owner of the funds received and had limited powers to dispose of the proceeds.

However, the court of cassation set aside this decision and remanded the case for a new hearing before the court of appeal. On reconsideration, the court of appeal concluded that the directors of Forum Muider B.V. are not limited in their powers and manage the company independently. The company has no restrictions on disposing of the dividends.

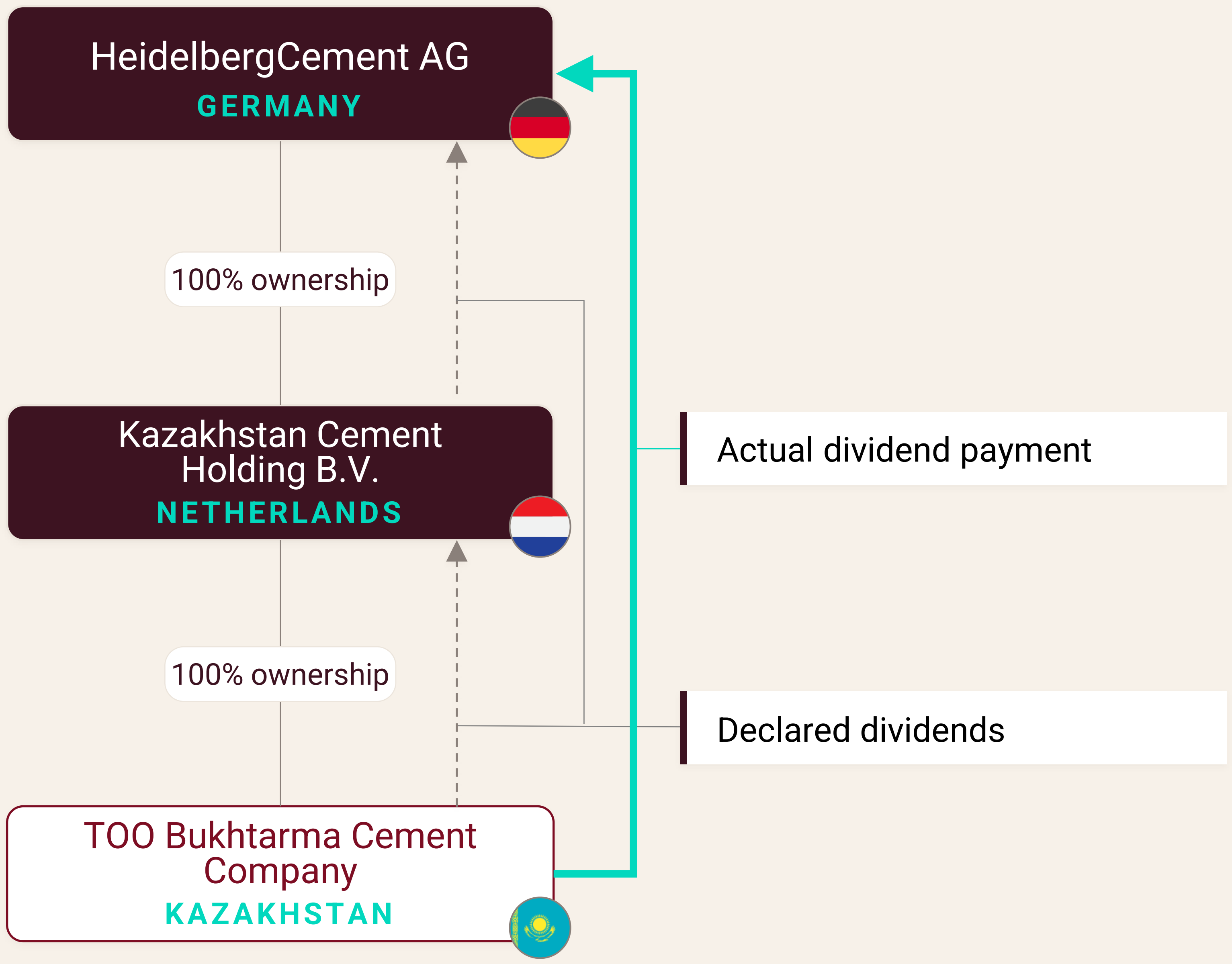
Consequently, the company is not an intermediary or a nominee holder and must be recognized as the beneficial owner of the dividend income.

> The application of the 5% rate on dividends was found to be justified. The ruling may be appealed to the court of cassation and the Supreme Court of the Republic of Kazakhstan.

Ruling of the Pavlodar Regional Court No. 5599-25-00-4a/307 dated 12 February 2026.

# The TOO Bukhtarma Cement Company Case

STRUCTURE AND CASH FLOWS




## CASE OVERVIEW

In 2013, TOO Bukhtarma Cement Company declared a distribution of profit in the form of dividends to its Dutch parent company, Kazakhstan Cement Holding B.V.

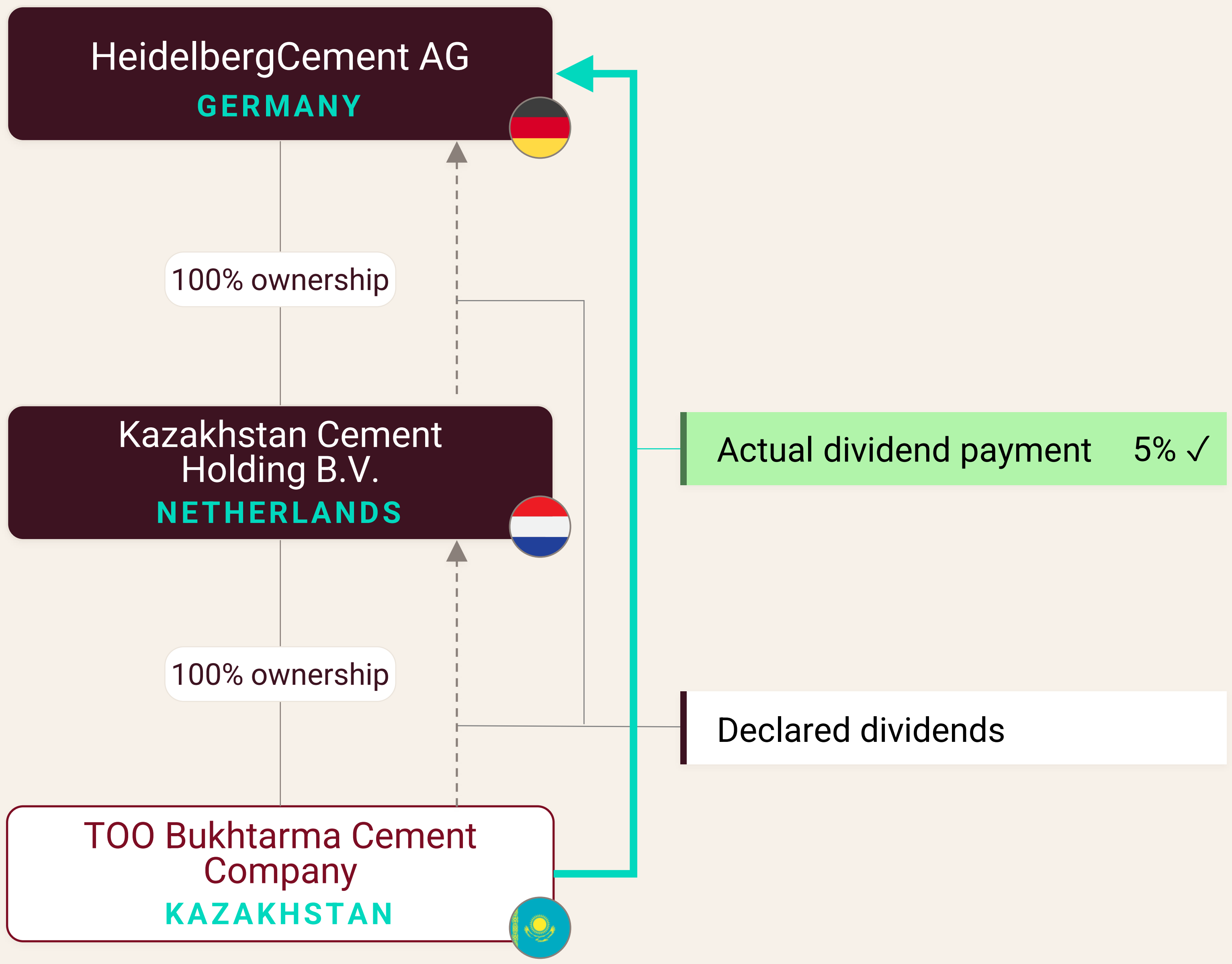
By order of the parent company, the dividends were transferred to Germany to HeidelbergCement AG, which is the parent company of the TOO's direct Dutch shareholder. A reduced withholding tax rate of 5% was applied under the Kazakhstan-Netherlands tax treaty.

## POSITION OF THE TAX AUTHORITIES

Following a tax audit for 2012-2016, the tax authorities assessed additional tax at 15%, considering that the German company HeidelbergCement AG was not the beneficial owner of the income. The company challenged this decision in court.

# The TOO Bukhtarma Cement Company Case

STRUCTURE AND CASH FLOWS




**COURT'S DECISION**

The court stated that three conditions must be met to apply the reduced withholding tax rate: the existence of an international treaty; the non-resident must be the ultimate beneficial owner of the income; the non-resident must be a tax resident of the treaty country.

The court examined evidence that HeidelbergCement AG settled the debt on the dividends declared in favor of Kazakhstan Cement Holding B.V. Based on the circumstances examined, the court concluded that the beneficial owner of the dividends was the direct parent company, Kazakhstan Cement Holding B.V., which was entitled to the 5% rate.

The court overturned the tax authorities' decision and confirmed that the 5% rate applied by the company was correct.

Supreme Court Ruling No. 6001-20-12-6a/56 dated 19 November 2020.

# Conclusions

## BENEFITS DO NOT APPLY TO INTERMEDIARIES

The mere receipt of money in an account does not mean that the recipient is the beneficial owner of the income for the purposes of reduced withholding tax rates. Treaty benefits do not extend to companies acting as formal intermediaries.

## MULTIPLE FACTORS

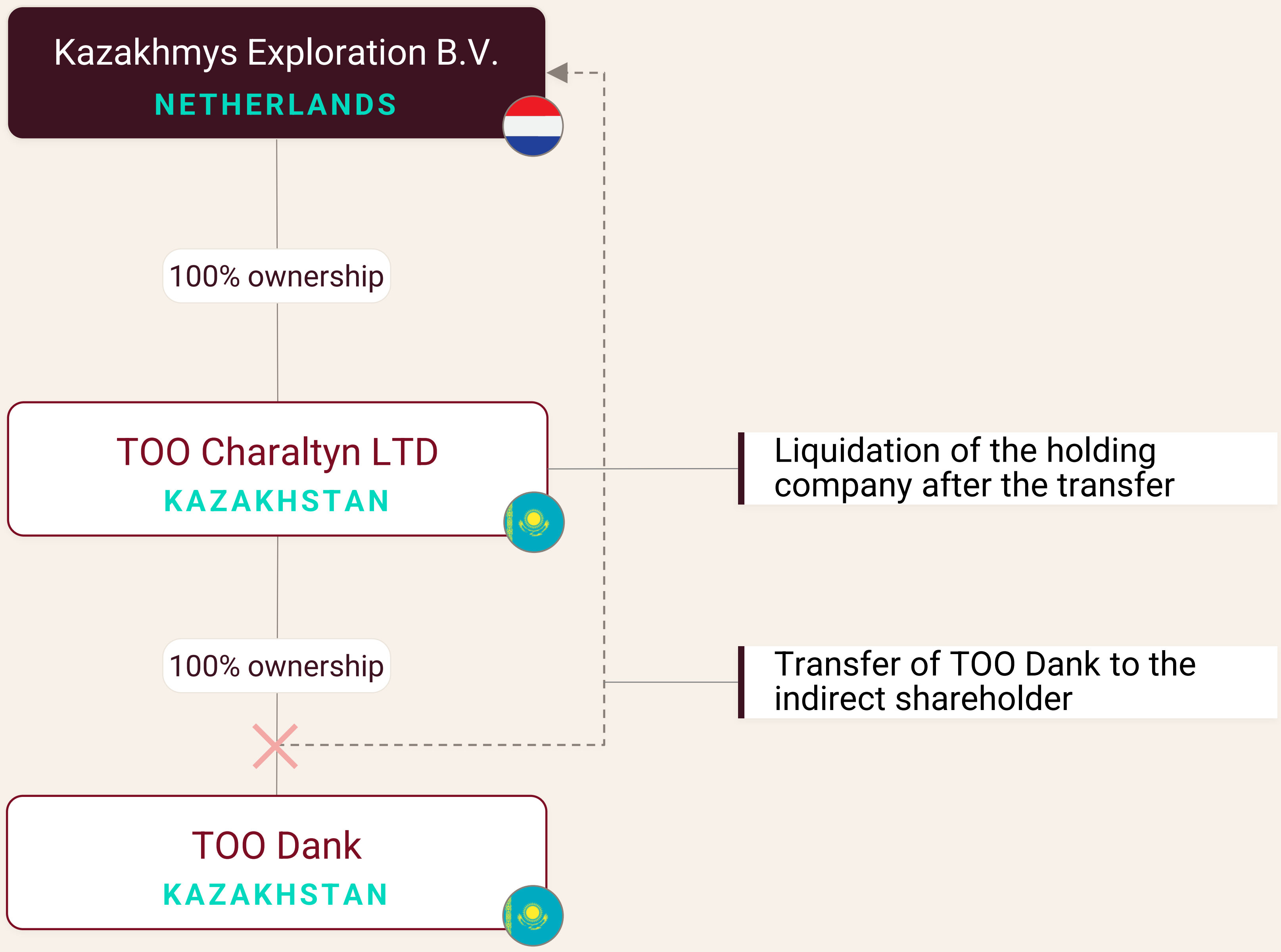
The ultimate ‘destiny' of the income (including the 'transit' nature of the cash flows) is highly significant, but is not the only factor. Other circumstances also matter: the legal right to dispose of the income, the nature of the recipient's activities (other income, doing business), the presence of employees, and the management arrangements. The concept of beneficial ownership is complex – there are no clear-cut answers, and the specifics of each situation matter.

# 04 Application of the Three-Year Tax Exemption in Restructuring

THE TOO DANK CASE

# The TOO Dank Case

RESTRUCTURING IN 2017




## CASE OVERVIEW

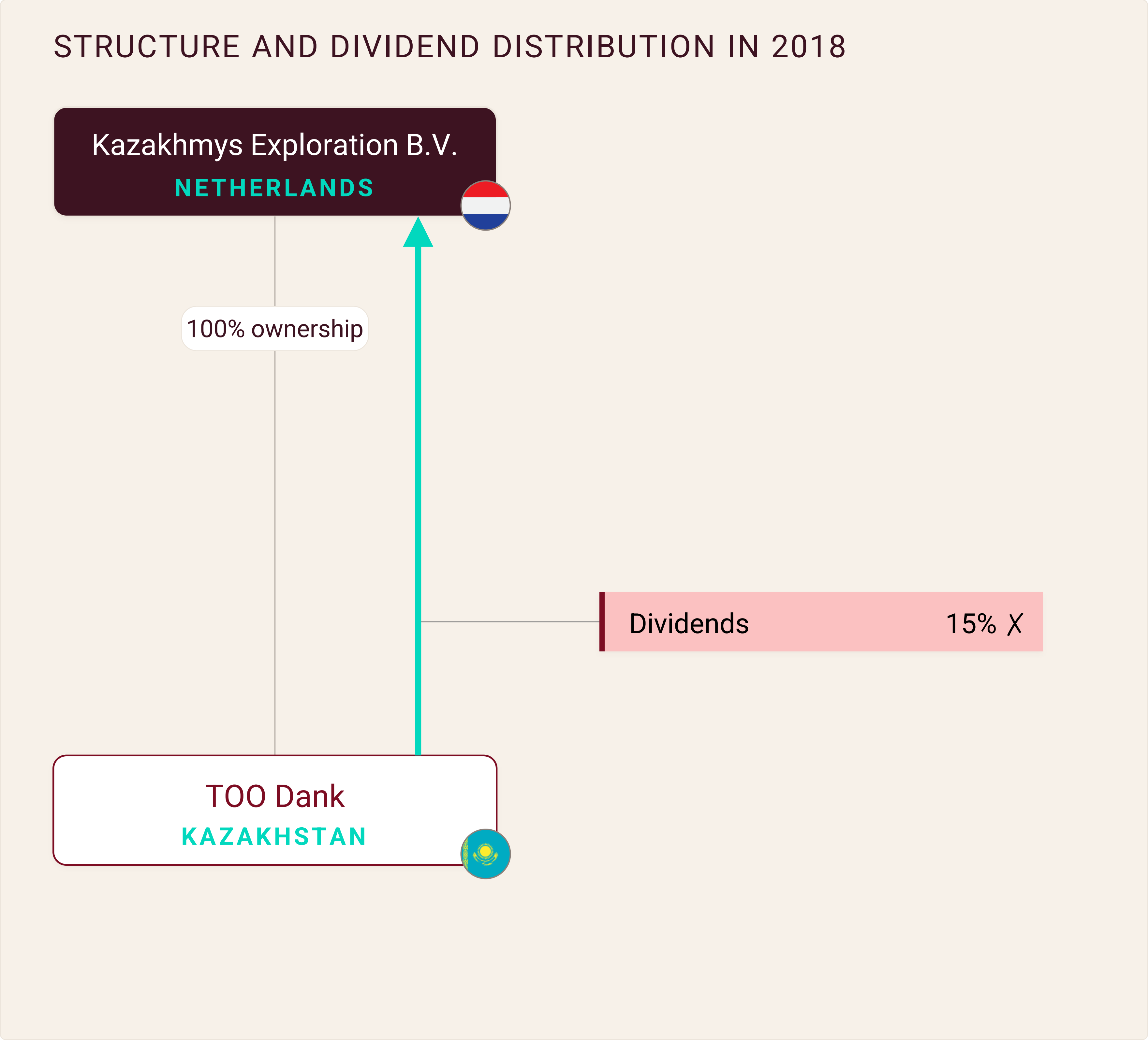
In January 2017, the interest in TOO Dank was transferred under an agreement between the direct and indirect participants. As a result, the Dutch company Kazakhmys Exploration B.V. became the participant of the TOO. In December 2017, TOO Charaltyn LTD – the TOO's former direct participant – was liquidated.

In October 2018, TOO Dank distributed dividends to its new shareholder, applying an exemption from withholding tax based on the three-year holding benefit.

## POSITION OF THE TAX AUTHORITIES

The tax authorities denied the benefit and imposed a 15% withholding tax. The company challenged 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 the conditions for the benefit were not met, namely: the company's owner changed less than three years before the dividend payment and not as a result of a reorganization. Moreover, the founders of the old and new owners of the interest were different persons.

In addition, before 2013 TOO Dank was a subsoil user, and the retained earnings since then were significantly lower than the dividends ultimately distributed for 2017.

> The additional withholding tax assessment on dividends was found to be justified.

Supreme Court Ruling No. 6001-21-00-3г/6698 dated 20 December 2021.

# Conclusions

## INTERRUPTION OF THE THREE-YEAR PERIOD

The three-year period for the dividend benefit is interrupted if a Kazakhstani company is sold between companies with different founders. The period is not interrupted by a reorganization, nor by a sale from one company to another if both companies have the same owners.

## LEGISLATIVE CHANGES

The dividend benefit now provides for a reduced 10% rate rather than an exemption. For capital gains, the benefit is retained, but the three-year period remains uninterrupted only in the case of a reorganization.

# 05 Withholding Tax Benefits on Royalties

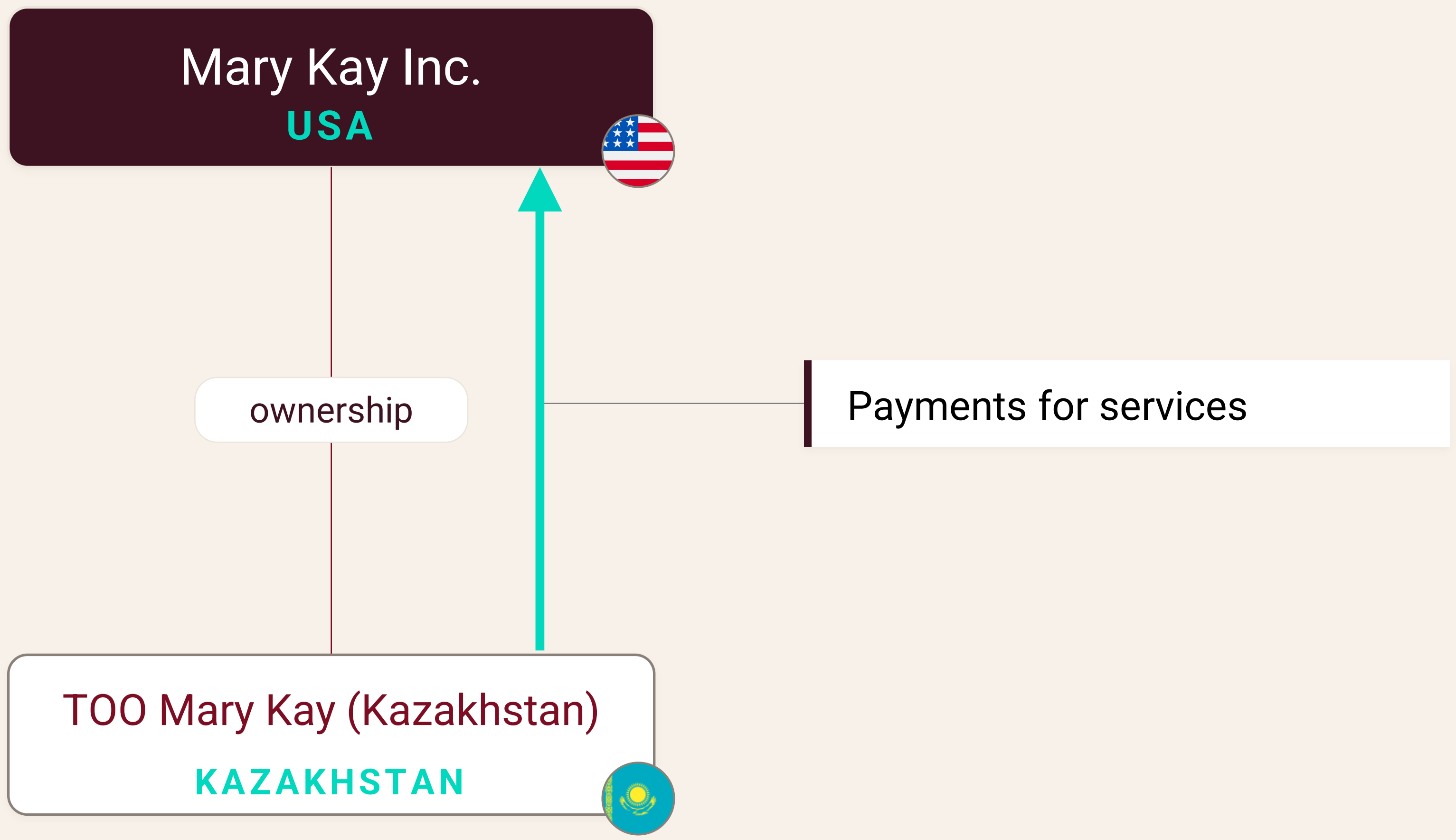
THE TOO MARY KAY (KAZAKHSTAN) CASE

THE TOO TNS-PLUS CASE

THE TOO METRO CASH & CARRY CASE

# The TOO Mary Kay (Kazakhstan) Case

STRUCTURE AND CASH FLOWS




## CASE OVERVIEW

In 2018-2022, TOO Mary Kay (Kazakhstan) paid fees for consulting services to the US company Mary Kay Inc.

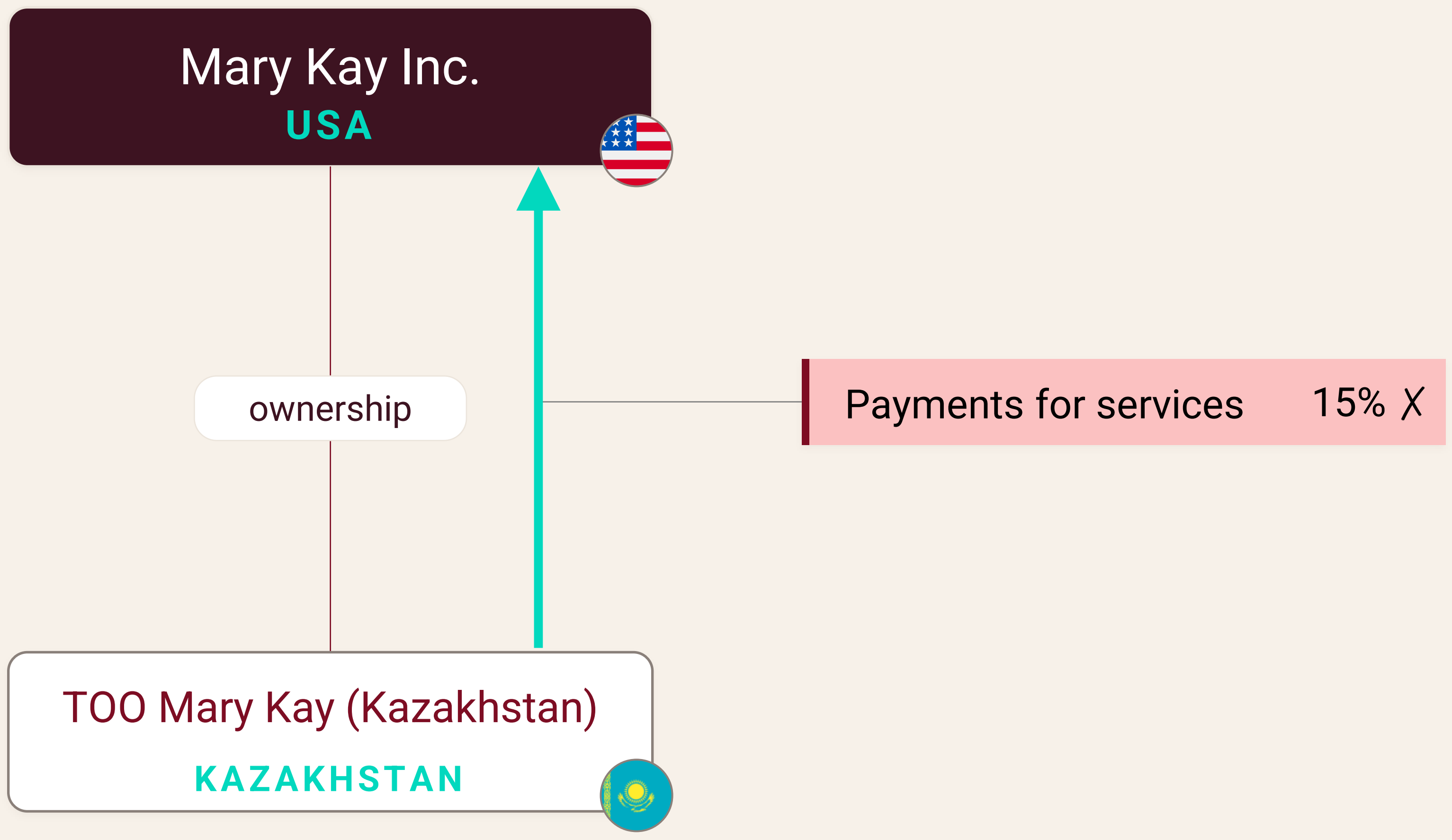
The TOO did not withhold tax based on the tax residency certificate provided by the US company and the tax treaty between Kazakhstan and the USA providing for a withholding tax exemption on payments for services.

## POSITION OF THE TAX AUTHORITIES

Following a tax audit, the TOO was assessed additional withholding tax on the fees for the US company's services, as the tax authorities classified the payments as royalties. The TOO challenged the assessment in court.

# The TOO Mary Kay (Kazakhstan) Case

STRUCTURE AND CASH FLOWS




**COURT'S DECISION**

The court agreed that the payments for services constitute royalties because:

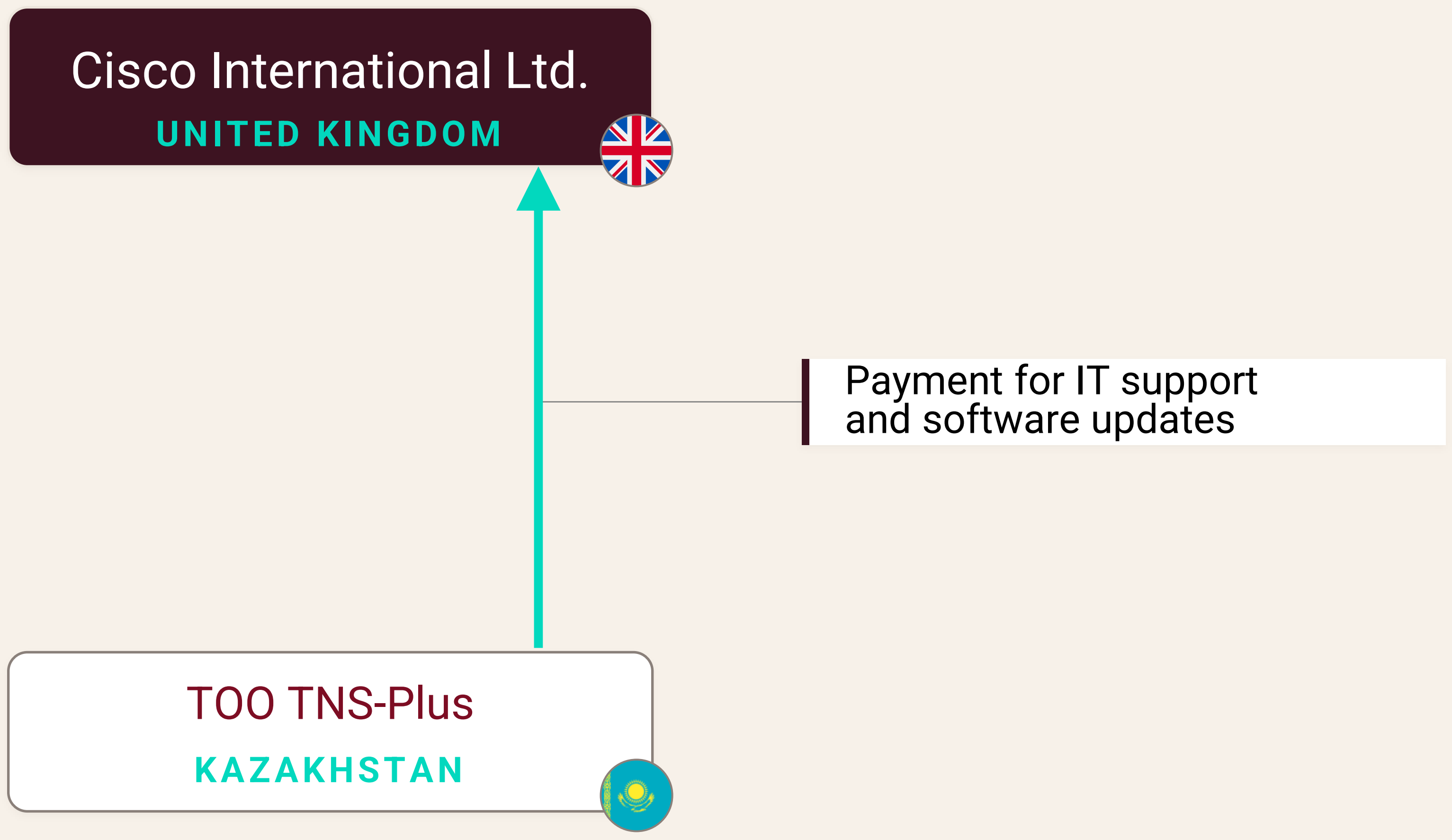
- under the services agreement, the American company transfers professional knowledge, experience, and information;
- the TOO agrees to comply with confidentiality and data protection terms;
- consequently, in providing the services, confidential commercial information ('know-how'), which is intellectual property, is transferred.

> The court denied the cancellation of the additional withholding tax assessments. The ruling may be appealed to the court of cassation and the Supreme Court of the Republic of Kazakhstan.

Resolution of the Judicial Collegium for Administrative Cases of the Almaty City Court No. 7599-25-00-4a/933 dated 28 October 2025.

# The TOO TNS-Plus Case

STRUCTURE AND CASH FLOWS




## CASE OVERVIEW

Cisco International Ltd. (UK) provided the Kazakhstani telecom operator TOO TNS-Plus with the following services: updating and correcting software, processing service requests, replacing faulty equipment, technical support, and consultations on installing new software versions.

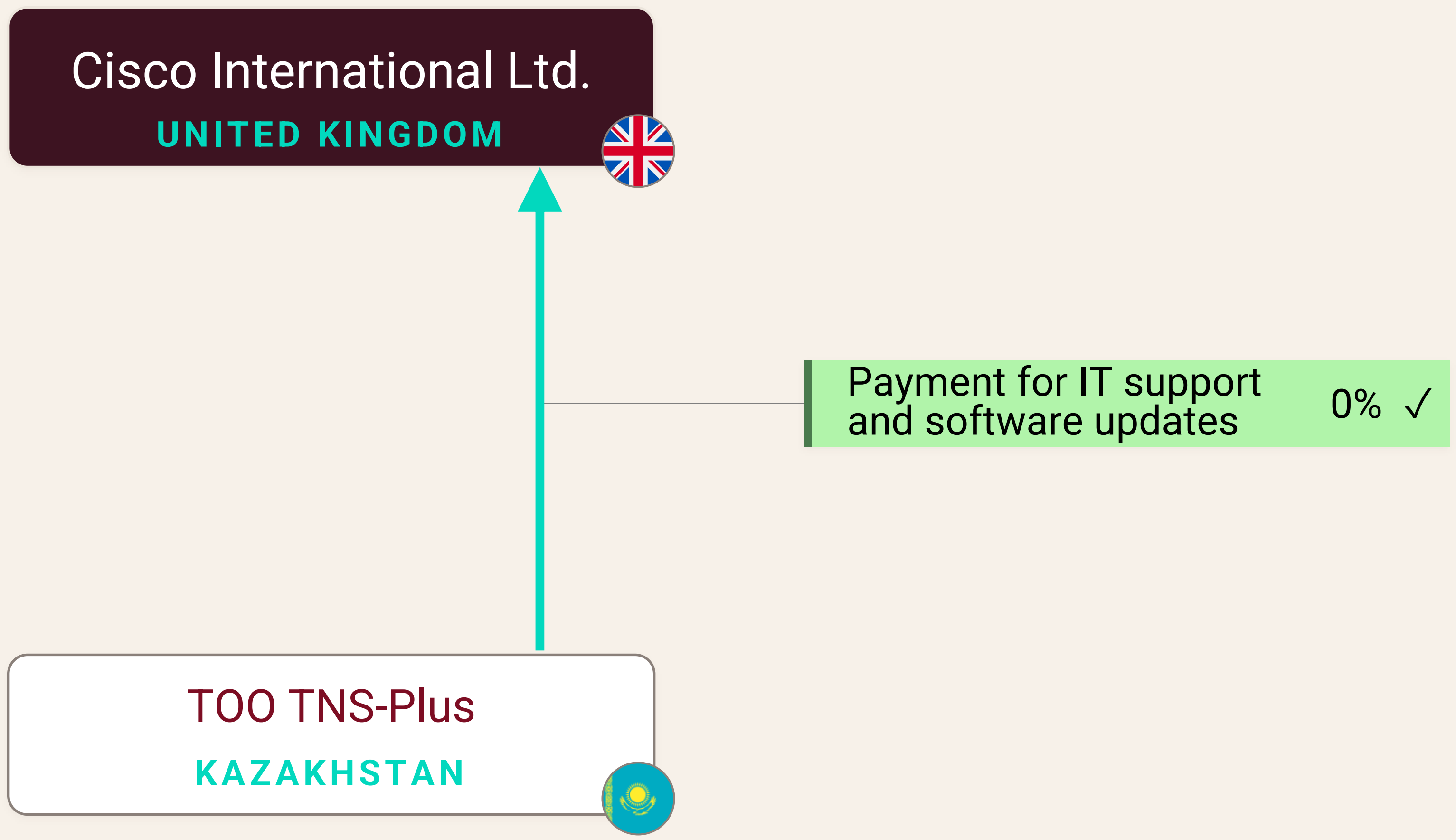
The TOO did not withhold tax, applying the exemption for services under the tax treaty between Kazakhstan and the United Kingdom.

## POSITION OF THE TAX AUTHORITIES

The tax authorities reclassified the payments to Cisco as royalties and assessed additional withholding tax at 15%. In the authorities' view, software updates fall within the definition of royalties as the use of rights to software.

# The TOO TNS-Plus Case

STRUCTURE AND CASH FLOWS




**COURT'S DECISION**

The court supported the taxpayer and treated the payments to Cisco as services, not royalties, because:

— the authorities did not analyze the actual content of the services – a formal reference to the definition of royalties is insufficient;

— technical support and software updates are maintenance services, not payments for the use of intellectual property;

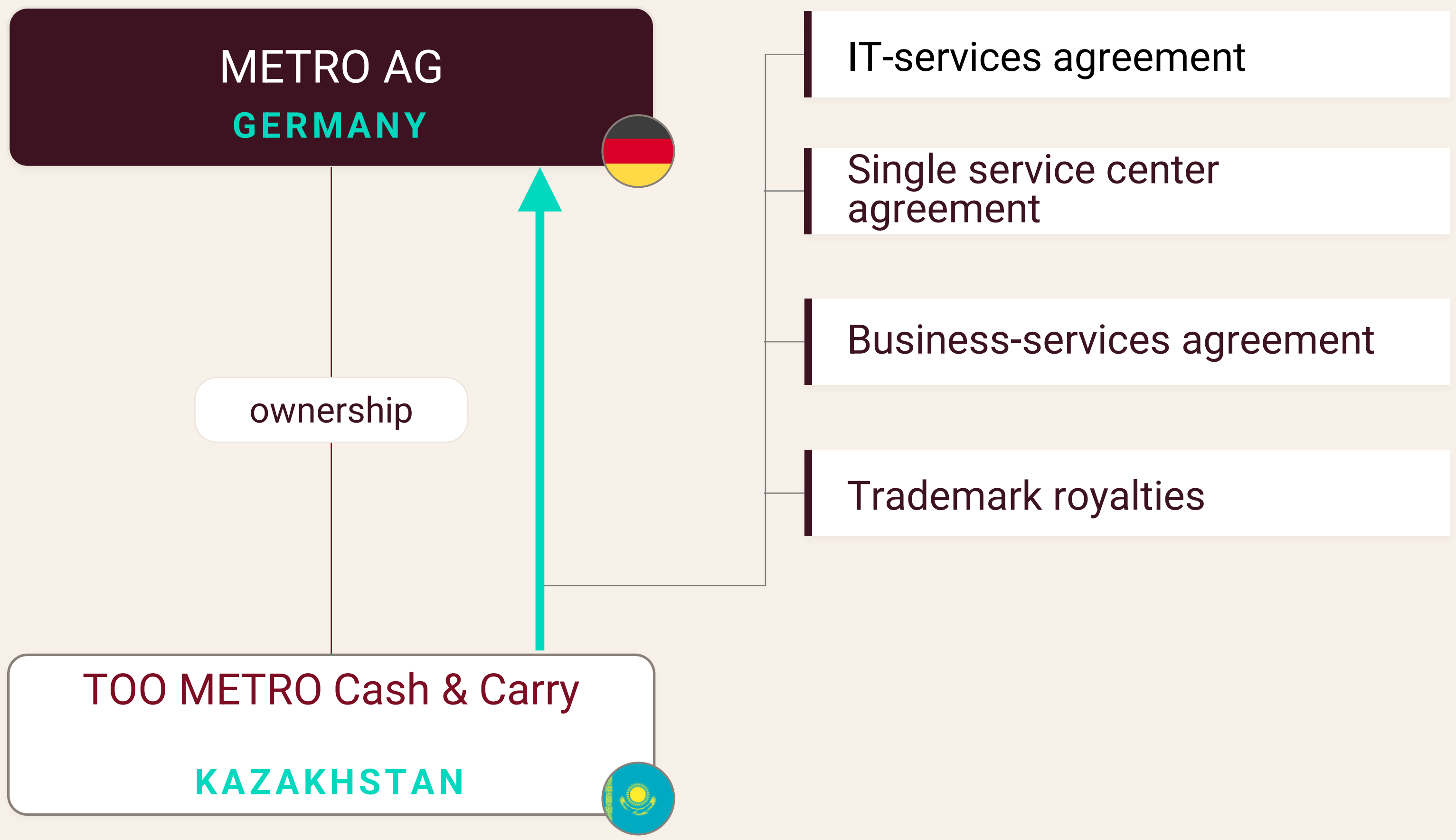
— the transfer of updated software versions is an ancillary part of the services, not a license.

The court overturned the tax authorities' decision and confirmed that the exemption of the payments from withholding tax was correct.

Supreme Court Ruling No. 6001-24-00-6ап/2251 dated 15 April 2025 (episode on the reclassification of IT services as royalties).

# The TOO METRO Cash & Carry Case

STRUCTURE AND CASH FLOWS




## CASE OVERVIEW

In 2018, TOO METRO Cash & Carry paid the invoices of the German group company (METRO AG) under:

- a framework IT-services agreement;
- a single service center agreement;
- a framework business-services agreement;
- a sublicense agreement for the use of the 'METRO' trademark.

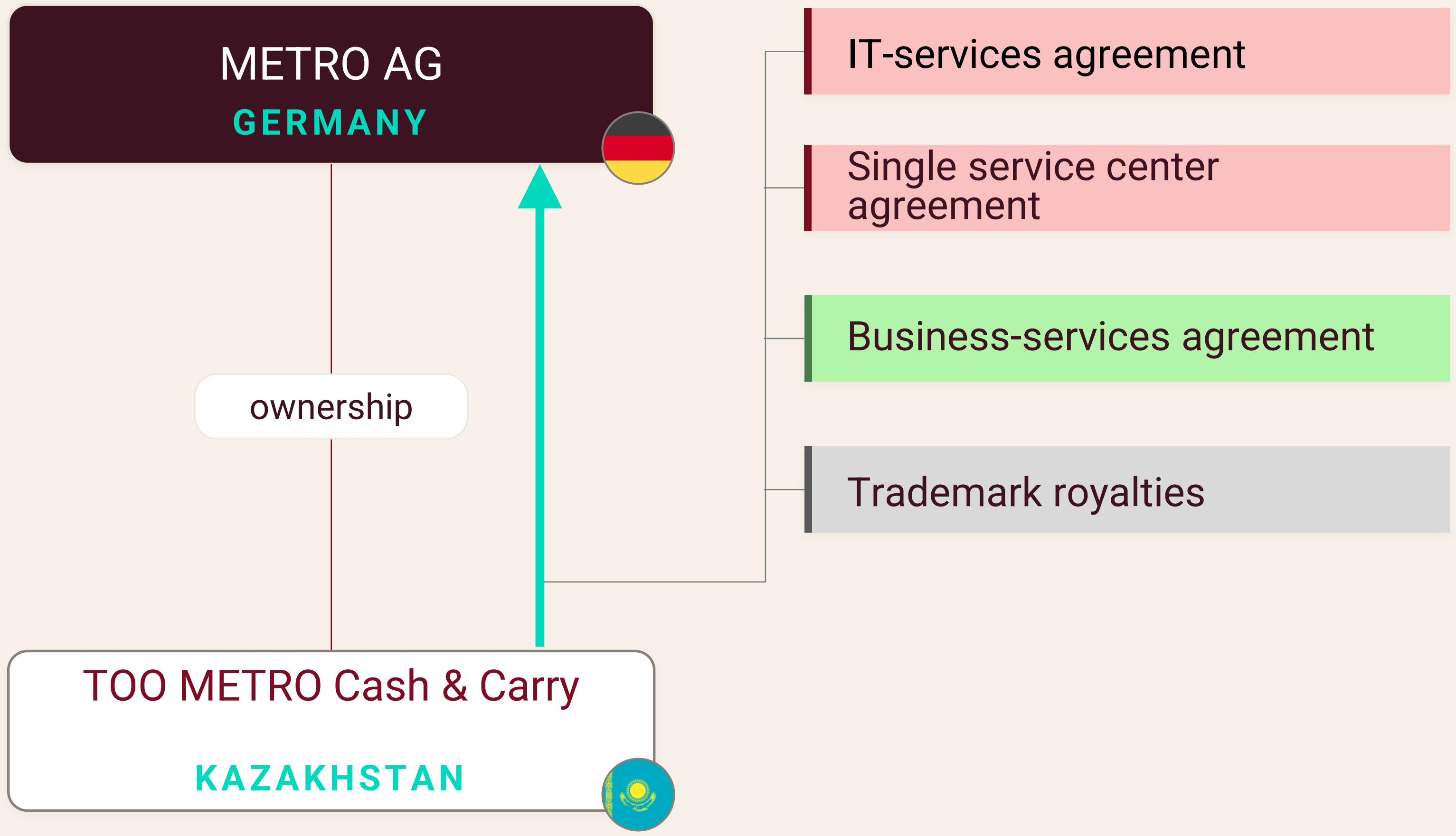
The TOO did not withhold tax on these payments.

## POSITION OF THE TAX AUTHORITIES

Following a comprehensive tax audit, all payments (IT services, service center services, and business services) were classified as royalties and assessed additional withholding tax at 15%. The TOO challenged these assessments in court. The authorities also assessed withholding tax on the royalties under the sublicense agreement, likewise at 15% – the TOO did not dispute the decision in this part.

# The TOO METRO Cash & Carry Case

STRUCTURE AND CASH FLOWS




## COURT'S DECISION: CLASSIFICATION OF PAYMENTS

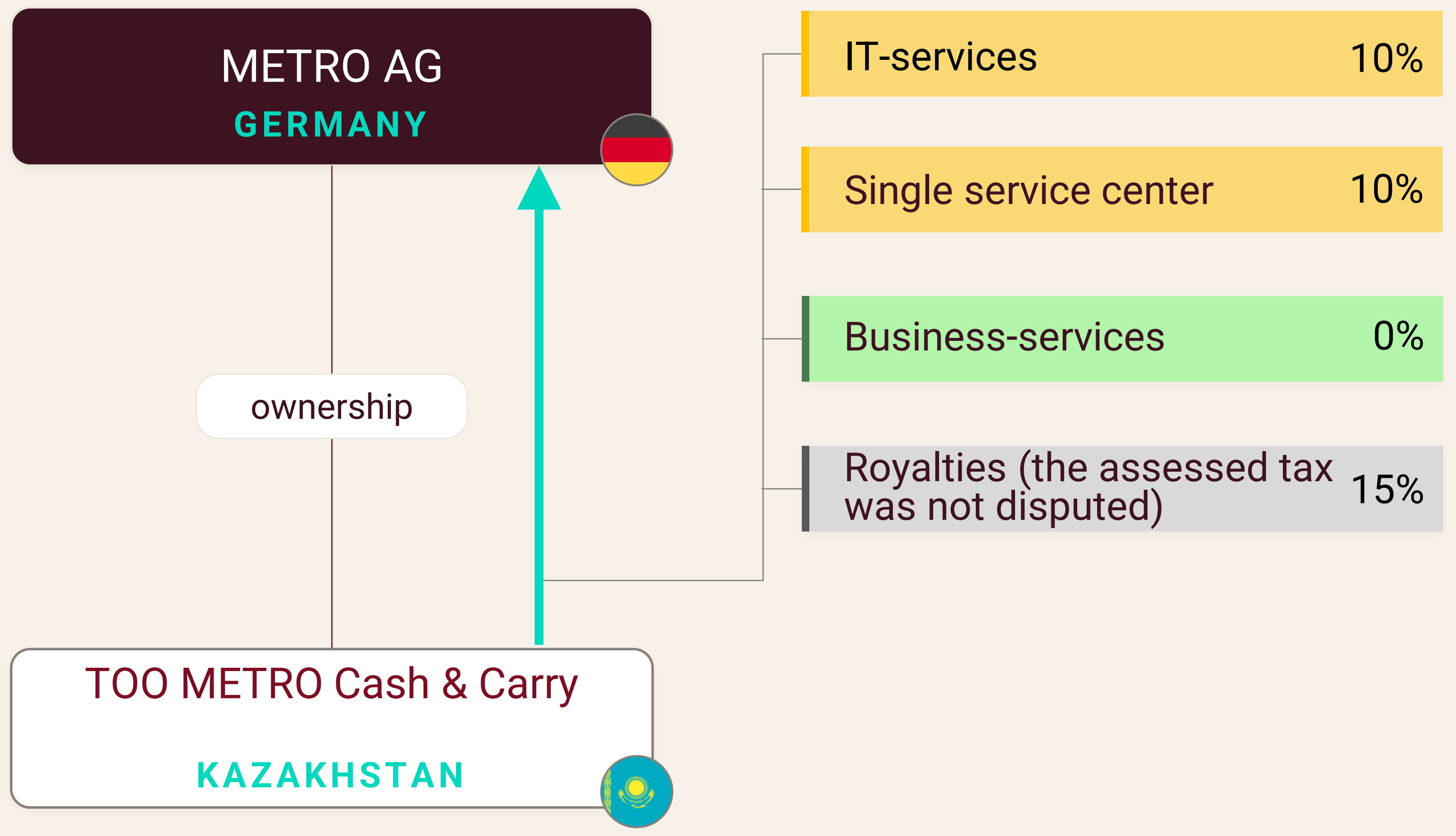
The court agreed with the tax authorities regarding the classification of payments under two agreements:

- under the IT-services agreement, software and databases were provided, so all remuneration under this agreement (including the main portion – for the adaptation and modification of IT products) must be classified as royalties;
- the payments under the single service center agreement are also royalties, since this agreement transferred the rights to use software and software components.

The court did not support the argument that the payments under the business-services agreement were royalties, since the description, procedure, and conditions of the services did not meet the definition of royalties.

# The TOO METRO Cash & Carry Case

STRUCTURE AND CASH FLOWS




## COURT'S DECISION: APPLICABLE RATES

For the payments classified as royalties, the court ruled that the reduced 10% rate under the tax treaty between Kazakhstan and Germany should apply. The ruling emphasizes that it is contradictory to classify payments as royalties under a tax treaty and not apply the reduced rate provided for in that treaty.

Positions of the TOO and the tax authorities, and the court's final decision:

| Type of services | TOO | Tax authorities | Court |
|---|---|---|---|
| IT-services agreement | no | 15% | 10% |
| single service center | no | 15% | 10% |
| business-services agreement | no | 15% | no |

The court overturned part of the assessments and applied the reduced 10% rate to the 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

## RISK AREA – INTELLECTUAL PROPERTY RIGHTS

Payments for services to foreign counterparties may be classified as royalties, which leads to additional withholding tax assessments. Agreements are at particular risk where, in addition to the provision of services, they provide for the granting of rights to intellectual property (software, databases) and confidential commercial information (treated as 'know-how').

## INCONSISTENT CASE LAW AND NEW RULES

Case law remains mixed: in some cases taxpayers manage to defend the classification of payments as services, while in others the courts agree with the classification as royalties. Different rates apply – the base 15% or the reduced 10% under tax treaties. As of 2026, the legislation contains a clarification: if royalties are separately specified in a technical support services agreement, withholding tax applies only to that part; if not, it applies to all income under the agreement (clause 5, article 683 of the Tax Code of the RK).

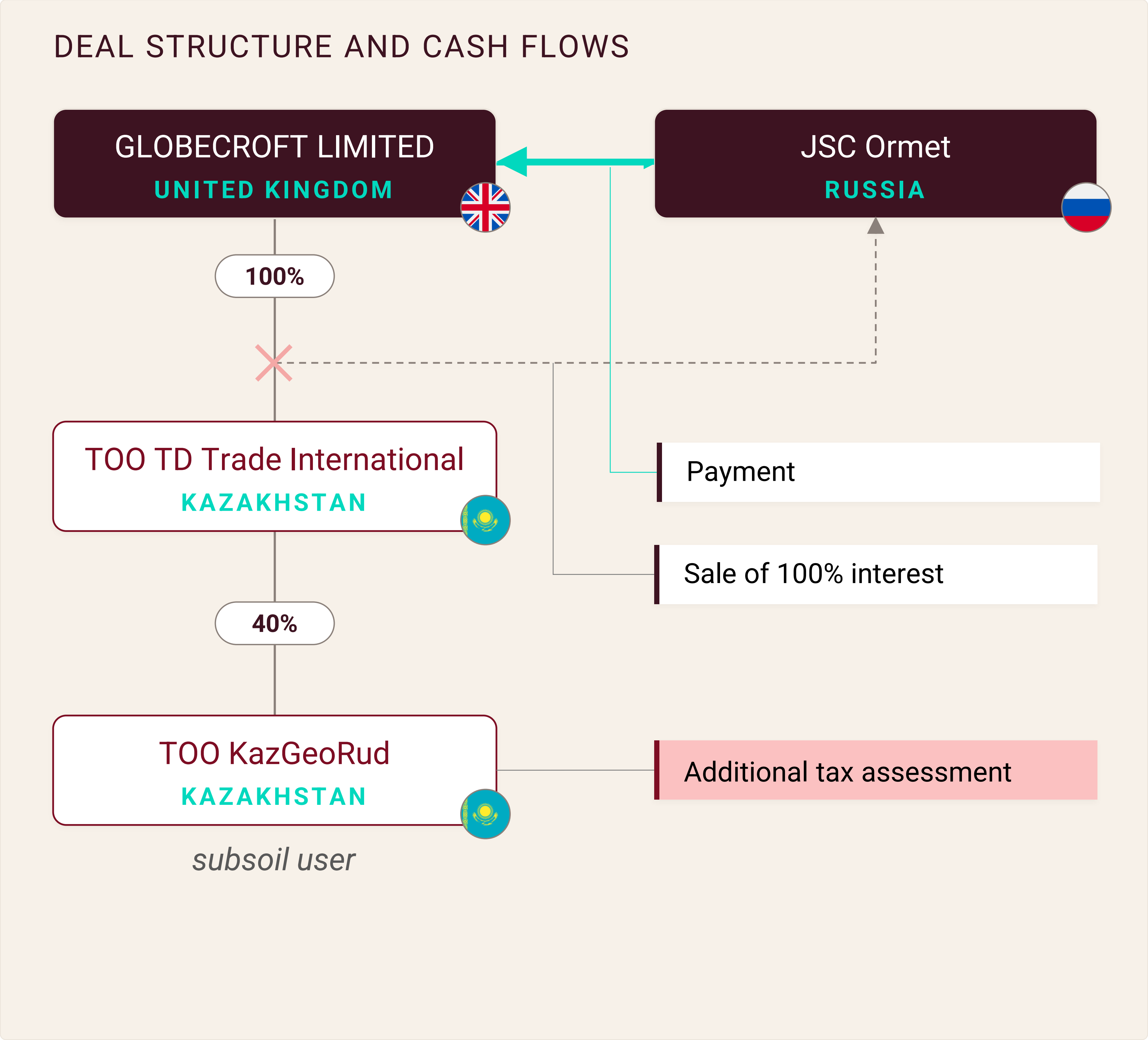
# 06 Tax Consequences of Transactions with Subsoil User Companies

THE TOO KAZGEORUD CASE

THE EAST ARAL PETROLEUM B.V. CASE

THE CCC MINING CONSTRUCTION B.V. CASE

# The TOO KazGeoRud Case




## CASE OVERVIEW

GLOBECROFT LIMITED (United Kingdom) sold a 100% interest in the Kazakhstani company TOO TD Trade International to the Russian JSC Ormet, realizing a capital gain.

The sole asset of the company sold was a 40% interest in the subsoil user TOO KazGeoRud. As the tax agent, JSC Ormet filed a return at a 0% rate, applying the benefit under the Kazakhstan-United Kingdom convention.

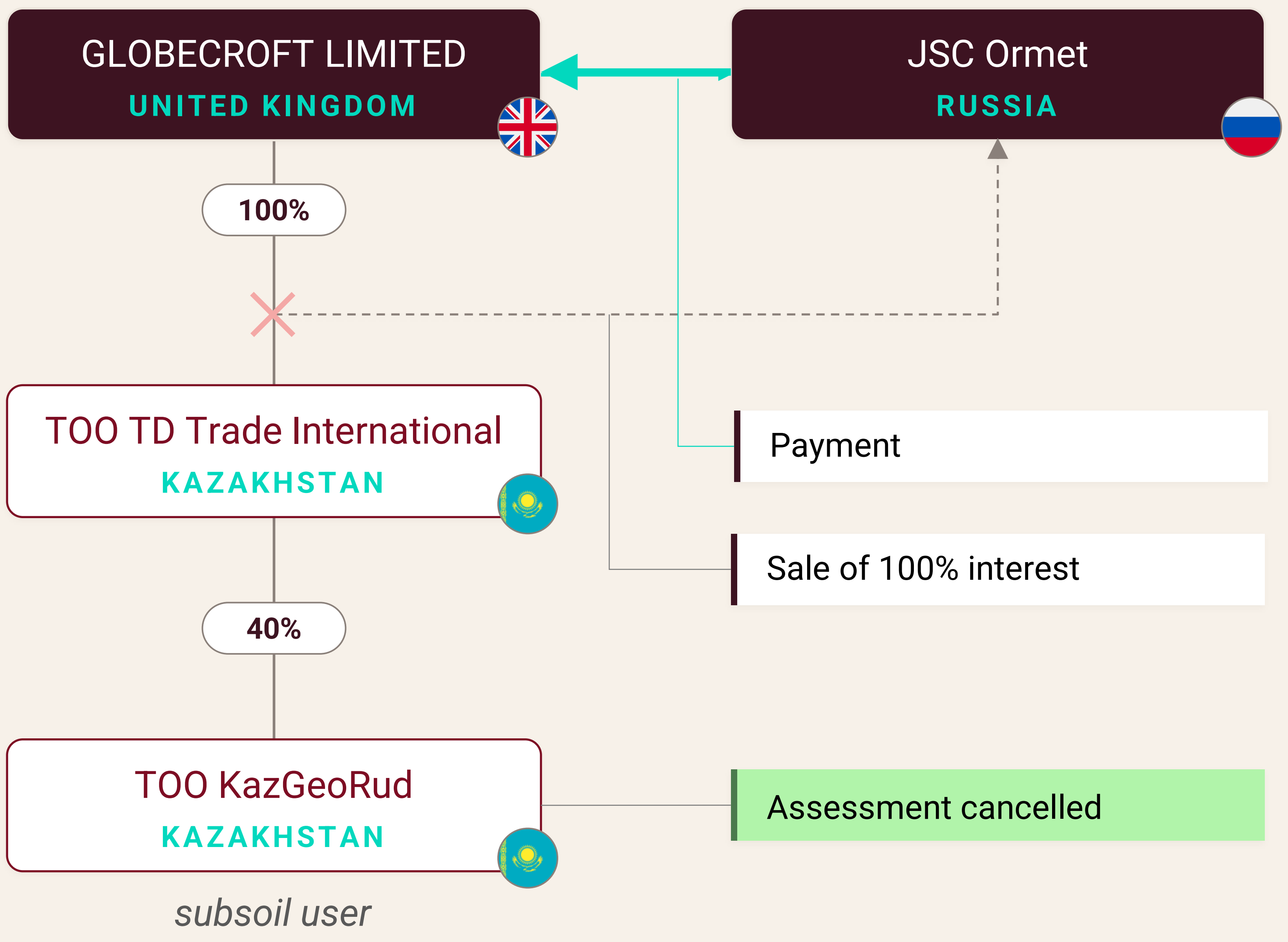
## POSITION OF THE TAX AUTHORITIES

The exemption was found to be unjustified: the capital gain from the sale of a company whose assets consist of the property of a subsoil user is taxable in Kazakhstan.

Since neither the tax agent nor the seller paid the tax, the obligation was imposed on the subsoil user company itself – TOO KazGeoRud – with an additional assessment of withholding tax and late-payment interest.

# The TOO KazGeoRud Case

DEAL STRUCTURE AND CASH FLOWS




**COURT'S DECISION**

The courts of first instance and appeal supported the taxpayer, but the Supreme Court disagreed with their reasoning.

The 'three-year benefit' exemption (subclause 8, clause 9, article 645 of the Tax Code, in the version then in force) does not apply: the seller had held the interest for under three years, and 100% of TOO TD Trade International's assets are subsoil-user property.

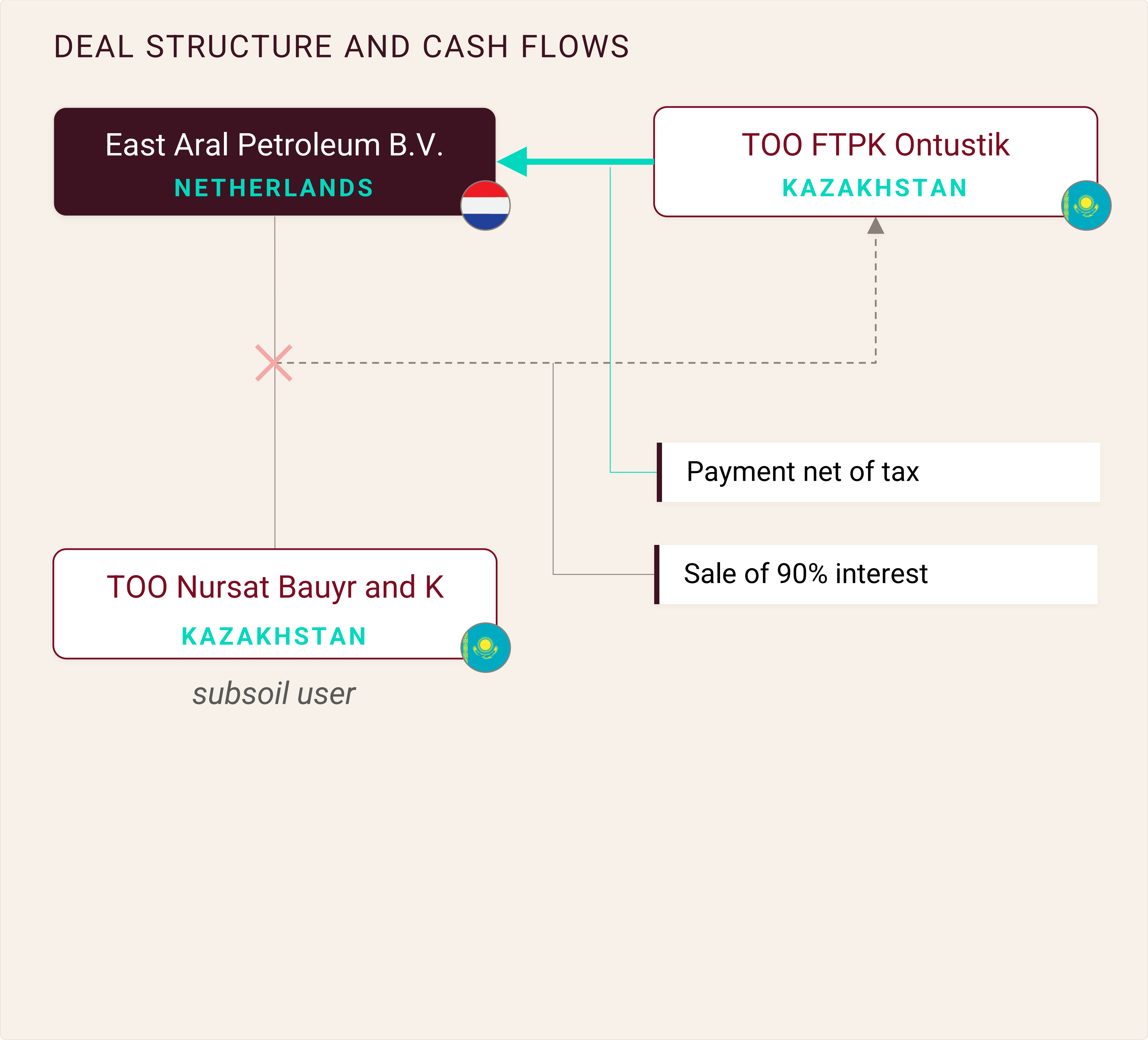
If neither the tax agent nor the non-resident pays the tax, the withholding CIT obligation passes to the subsoil user. The treaty benefit cannot be self-applied via a 0% return – the non-resident must claim a refund.

Even so, the court upheld the lower courts' cancellation of the assessment, because the authorities breached the audit time limits (38 days instead of 30).

On the merits, the court agreed with the assessment, but overturned it on procedural grounds (breach of the tax audit time limits).

Ruling of the Judicial Collegium for Administrative Cases of the Supreme Court of the Republic of Kazakhstan No. 6001-24-00-6ап/2587 dated 12 June 2025.

# The East Aral Petroleum B.V. Case




## CASE OVERVIEW

In 2010, TOO FTPK Ontustik acquired from the Dutch company East Aral Petroleum B.V. a 90% interest in another Kazakhstani company, TOO Nursat Bauyr and K – a subsoil user.

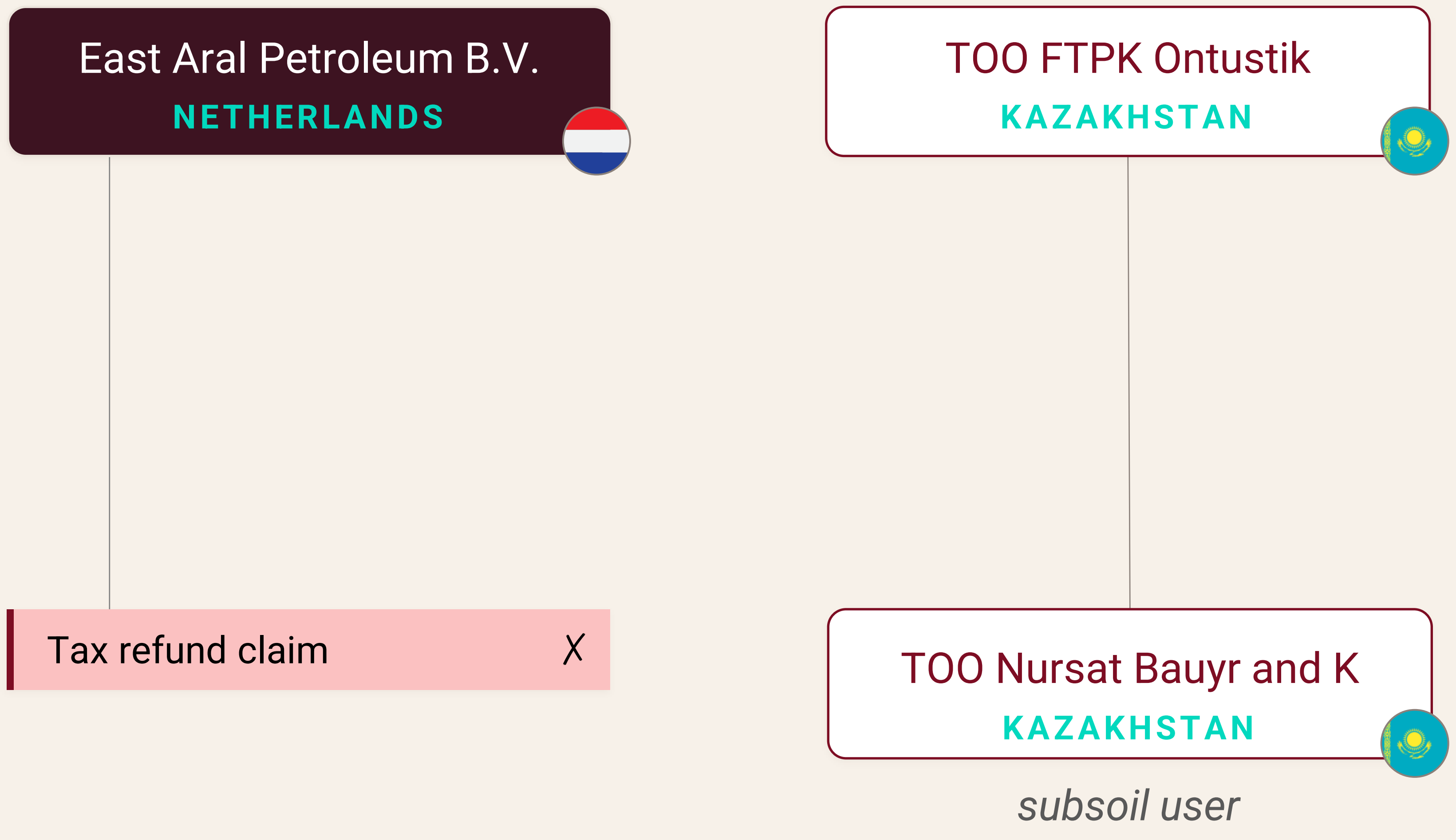
The buyer withheld tax at 15% from the consideration paid. The Dutch company (the seller) filed a claim for a refund of the withheld tax.

## POSITION OF THE TAX AUTHORITIES

The tax authorities denied the refund. The company challenged the refusal in court.

# The East Aral Petroleum B.V. Case

NEW STRUCTURE




## COURT'S DECISION

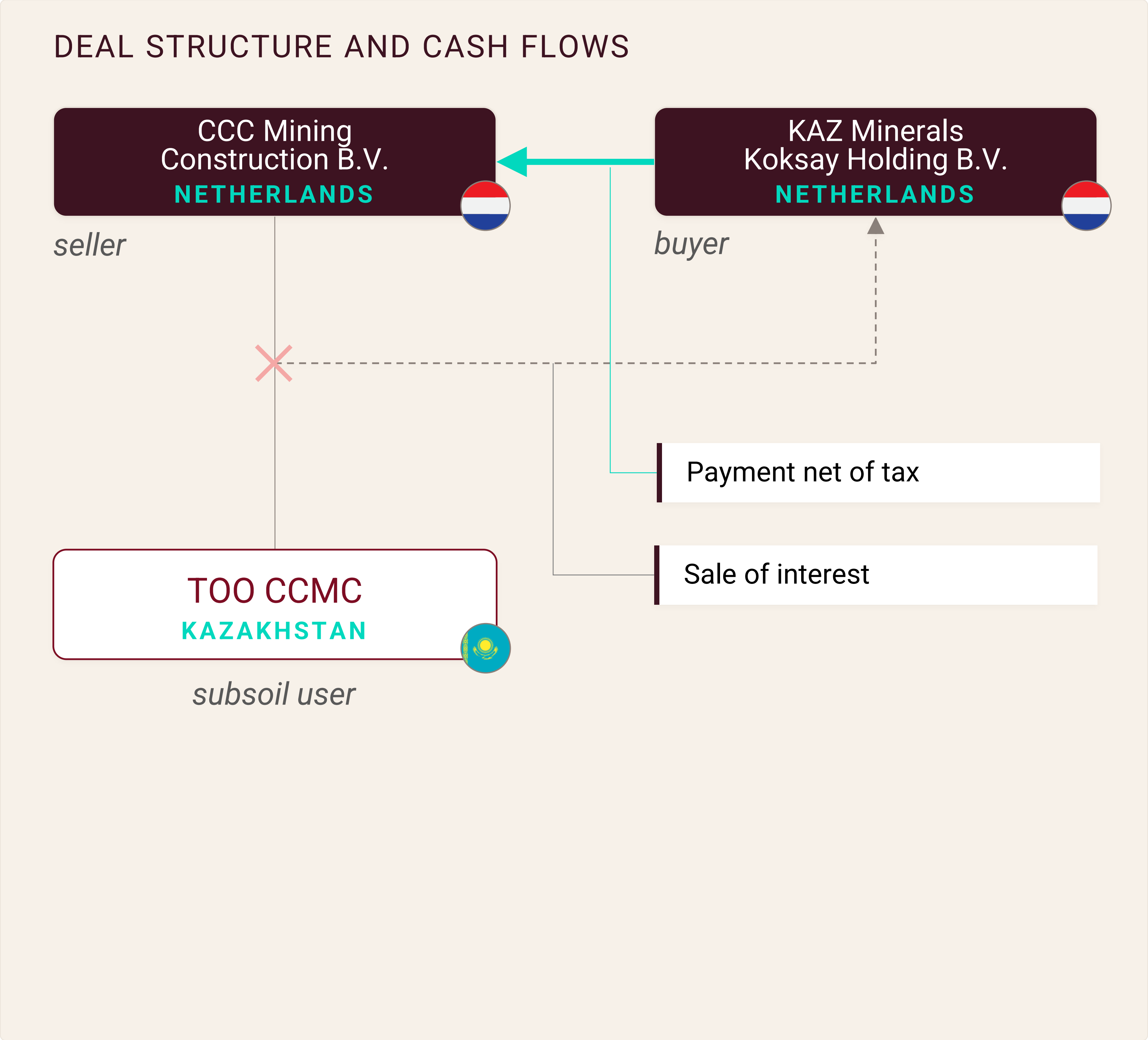
Under the Kazakhstan-Netherlands treaty, income from the sale of shares whose value consists of real estate (including rights to the exploitation of natural resources) is taxable in Kazakhstan. An exception is property in which business activities are carried out.

Under the tax treaty, the tax withheld in Kazakhstan can be credited in the Netherlands.

The court denied the refund of the withholding tax withheld in Kazakhstan on the purchase.

Supreme Court Ruling No. 6001-18-00-3Г/4708 dated 13 August 2018.

# The CCC Mining Construction B.V. Case




## CASE OVERVIEW

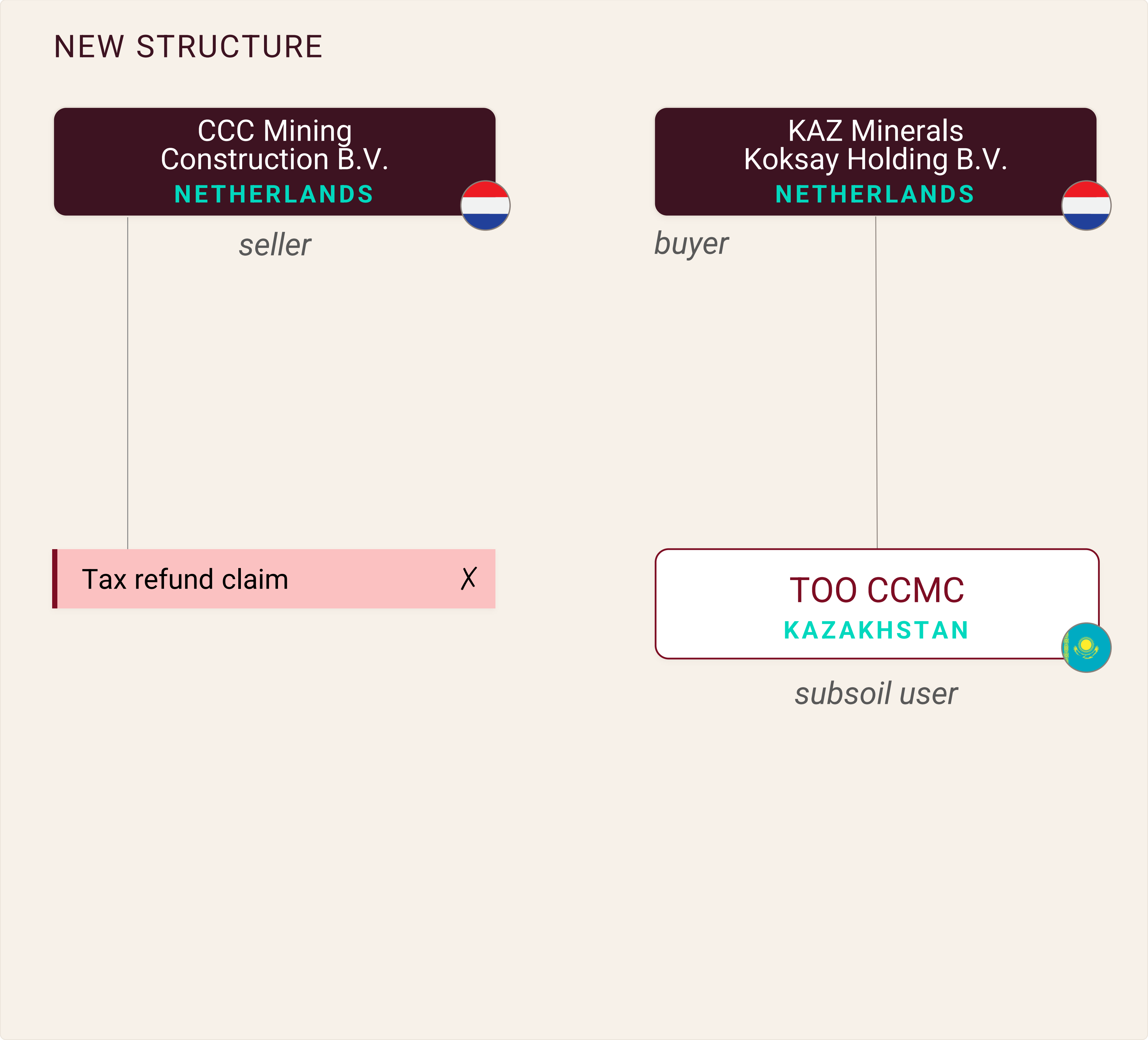
In 2014, the Dutch company KAZ Minerals Koksay Holding B.V. acquired from another Dutch company, CCC Mining Construction B.V., a 100% interest in the Kazakhstani company TOO Consolidated Construction Mining Company (TOO CCMC). TOO CCMC was a subsoil user.

The buyer registered in Kazakhstan as a tax agent and withheld tax on the capital gain upon the purchase of the interest. The Dutch company (the seller) filed a claim for a refund of the withheld tax.

## POSITION OF THE TAX AUTHORITIES

The tax authorities denied the refund. The company challenged the refusal in court.

# The CCC Mining Construction B.V. Case




**COURT'S DECISION**

The first two court instances sided with the taxpayer, deciding that the tax authorities had not demonstrated that the subsoil user does not carry out business activities using licenses (relating to real estate), and that therefore the exception under paragraph 2 of article 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 withholding tax withheld in Kazakhstan on the purchase.

Supreme Court Ruling No. 6001-16-00-3Г/8195 dated 19 October 2016.

# Conclusions

## TAXATION IN KAZAKHSTAN

The sale of a subsoil user company is subject to withholding tax in Kazakhstan. Tax treaties generally do not remove such tax consequences, since the value of the shares of such companies is formed by rights to natural resources. That said, the Kazakhstan-Netherlands tax treaty contains an exemption for the sale of companies holding real estate in which business activities are carried out.

## POSITION OF THE COURTS

The courts consistently side with the tax authorities and do not accept that, under the tax treaty between Kazakhstan and the Netherlands, the tax is not due in Kazakhstan. The withheld tax is not refunded. In the TOO KazGeoRud case, the Supreme Court confirmed the taxation of an indirect sale and the possibility of imposing the tax on the subsoil user, but overturned the assessment due to a breach of the audit time limit; the benefit cannot be applied unilaterally – only through a refund.

# Contact us to discuss your situation:


## Victor Kalgin

Managing Partner

T: +7 905 709 52 84

E: vkalgin@globalaimcons.com

## Elena Popova

Partner

T: +7 985 250 68 82

E: epopova@globalaimcons.com