

## **GUIDANCE NOTES FOR UNINCORPORATED CONSORTIUM**

If a foreign company (non-resident not registered in the RoK) and RoK company have an interest in the tender process as Unconsolidated Consortium, the following RoK tax legislation requirements shall be fulfilled, namely:

### **I. Permanent establishment**

As per Article 220.1.10 of the RoK Tax Code if a non-resident enters into a Consortium for rendering services on the RoK territory, its activity leads to a permanent establishment in the RoK and this non-resident must be registered in the RoK and himself fulfil his tax liabilities in accordance with the RoK tax legislation.

Please note that for the purpose of WHT and VAT this non-resident must be registered both in the RoK Tax Authority (as an independent payer of Corporate income tax in the RoK) and in the RoK Justice Authority as a branch for VAT purposes (because only a KZ registered branch can become an independent payer of Kazakhstan VAT) as per Articles 76.1 and 82.1 of RoK Tax Code. Only the availability of both RoK Branch Registration Certificate (Свидетельство об учетной регистрации филиала) with Business Identification Number (BIN) and RoK VAT registration certificate can be considered as full confirmation that the non-resident has the registered permanent establishment (branch) in the RoK and independently pays taxes in the RoK from the income received in the RoK.

### **II. Taxation**

#### **RoK company and non-resident registered in the RoK**

With respect to the RoK companies and non-resident companies registered in the RoK, no WHT will arise. At that, such companies are independent payers of Kazakhstan VAT in the RoK.

#### **Non-registered non-residents**

Income from performance of work, rendering of services on the territory of the Republic of Kazakhstan shall be recognised as income for a non-resident from sources in the Republic of Kazakhstan and liable to 20%WHT in the RoK (Art.644.1.2 and 646.1.1 of RoK Tax Code).

Please note that for the work/services performed in the RoK, KPO at his own cost and in his own name will be paying VAT for a non-registered non-resident (Reverse Charge VAT) in the RoK.

### **III. Invoices issue for consortiums**

As per Art. 417 of RoK Tax Code in case of the Unincorporated Consortium the following invoicing requirements should be fulfilled:

- *an invoice shall be issued by Authorised Party;*
- *the details of each participant of this consortium shall be indicated in an invoice;*
- *the total amount of the turnover and the amount of the turnover due to each participant in accordance with provisions of the consortium shall be indicated.*

Therefore, please be informed that invoices shall be issued by Authorised Party with indicating the details of each participant as well as the amounts due to each participant and the total amount of turnover.

### **IV. Summary**

Taking into consideration all above-mentioned please note that for the purpose of RoK legislation requirements observance the conclusion of the contract with the Unincorporated Consortium consisting of a not-registered non-resident and RoK resident is impossible, due to the following:

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- RoK residents and non-registered non-residents have different taxation approaches and procedures on WHT and Kazakhstan VAT;
- due to different taxation approaches the correct issuance of one invoice for RoK resident and non-registered non-resident will be impossible;
- if a non-resident enters into consortium without registration in the RoK, he will violate the RoK tax legislation (Article 220.1.10 of RoK TC);

**Therefore, the contract with the Unincorporated Consortium can be concluded only after all its participants are registered in the RoK in accordance with the RoK tax legislation.**