

Guidelines on Withholding Tax for Software Products / Services

COMPANY present a set of simple rules that should be considered when concluding a contract.

A. Royalty – taxation

Payments for the use or right to use software as well as database (web-resources) are recognised as Royalty and subject to WHT from income of non-resident in the Republic of Kazakhstan under the **rate of 15%**, if such payments are effected in respect of non-resident legal-entity operating without formation of a permanent establishment in the RoK. Therefore, payments under contracts for supply of software and license as well as for provision of database access (subscription to web-resources) relate to royalty.

As a rule, software includes licence, software itself, software and (or) data storage device as well as documentation. Such supplies shall be subject to customs clearance. Royalty is taxable irrespective of customs clearance or its absence.

The RoK Tax Codes provides the following definition of Royalty

“Royalty - payment for the use or right to use copy rights including software, drawings or models except for the full or partial realization of property (exclusive) rights for intellectual property object; the use or right to use patents, trade marks or other similar types of rights; use or right to use industrial equipment including sea craft to be leased in accordance with the bareboat-charter or demise-charter, and air craft to be leased in accordance with the demise-charter as well as merchant or research equipment; use of the «know-how»; use or right to use films, video films, sound records or other recording facilities”.

Similar definitions are used in most Conventions on avoidance of double taxation ratified by the RoK (hereinafter – Convention).

Royalty shall be taxable at the **rate of 15%**, except of royalty payable to non-residents, registered in country with privileged taxation, included into the list approved by the Order of the Minister of Finance of the Republic of Kazakhstan. Royalty payable to such non-residents is subject to taxation under the **rate of 20%**.

KPO as a tax agent has the right by oneself to apply the decreased tax rate (from 15% up to 10%-12% depending on provisions of the Convention) to non-resident income in form of Royalty if such non-resident is established in the country the RoK concluded the Convention and provided that all the following conditions are met:

1) Non-resident Contractor is the ultimate (actual) recipient (beneficiary) of income;

The ultimate (actual) recipient (beneficiary) of income shall mean a person who holds the right of ownership, use, disposal of the income and is not an intermediary with respect to such income including agent, nominal holder.

In each calendar year KPO before effecting any payment (provision of the invoice) the contractor shall get a guarantee from the Contractor that it is the ultimate (actual) recipient (beneficiary) of income received from KPO.

For that the Contractor shall provide KPO with copies of patent, confirming the copyright for software intellectual property as the ultimate beneficiary of income.

2) Non-resident Contractor provides the original of a document confirming residence (certificate of residence), for the appropriate tax year, in a proper way certified by an apostille or legalised in compliance with the RoK legislation, before payment of income to such Contractor.

A Certificate of residence shall be duly completed and provided to KPO Accounts Payable department together with the first invoice for the relative year.

Provisions of the international agreement shall not be applied if a non-resident forms a permanent establishment in the RoK.

B. Software technical support

Payments to non-residents operating without formation of a permanent establishment in the RoK, for software maintenance and other related services usually recognised as of consultancy services* (technical support in form of consultations by phone, e-mail, fax, internet, etc.), and are subject to WHT under the **rate of 20%** from non-resident income in the RoK, irrespective of the place of rendered services.

** According to Art.1.54 of the RoK Law on Computerisation “technical support “- provision of consulting, information technology and other services aimed at support of software working efficiency.*

C. Requirement on registration in the RoK

CONTRACTOR engaged in entrepreneurial activity in the Republic of Kazakhstan resulting in formation of a permanent establishment (if CONTRACTOR is not registered yet), must be registered as a taxpayer with a tax authority of the RoK.

It is recommended to get advice of tax experts in order to define any of such requirements.