



010000 Астана қаласы, Жеңіс даңғылы, 11, e-mail: info@mgd.kz  
 тел.: (7172) 71-80-02, факс: (7172) 71-80-54

010000 город Астана, проспект Победы, 11, e-mail: info@mgd.kz  
 тел.: (7172) 71-80-02, факс: (7172) 71-80-54

29 ЯНВ 2011

№ НР - 13 - 31 / 939

**International Tax Cooperation Section  
 Financing for Development Office  
 U.N. Dept. of Economic and Social Affairs**  
 Two U.N. Plaza, room DC2-2042  
 United Nations  
 10017 New York, United States of America

The Tax Committee of the Ministry of Finance of the Republic of Kazakhstan presents its compliments to the Department of Economic and Social Affairs of United Nations and kindly asks to present its opinion concerning following situation.

Company A - resident of State A furnishes services on technical assistance in management of sea projects to Company B in the territory of State B through engaged personnel according to contract № 1. Total period of stay of personnel in the territory of State B amounted to 264 days.

Also Company C resident of State C furnishes services to Company B – resident of State B identical by character of services of Company A through engaged personnel in accordance with contract № 2 and this personnel earlier furnished services on behalf of Company A. Total period of stay of personnel in the territory of State B amounted to 134 days.

At the same time Company A is the holder of 40% shares of Company C.

In accordance with sub-paragraph d) paragraph 3 Article 5 of the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital concluded between State A and State B (hereinafter referred to as – DTA) the term "permanent establishment" also includes the furnishing of other services, including consultancy services, by an enterprise through employees or other personnel engaged by that enterprise for such purpose, but only if such activities continue (for the same project or for a related project) in the territory of the country for more than 12 months.

Thus in accordance with provisions of Article 5 of DTA Company A forms a permanent establishment in State B when furnishing services through personnel engaged by Company A for such purposes, in case of activity of Company A

#35

RECEIVED FEB 16 2011

0029670

continue (for the same project or for a related project) in the territory of State B for more than 12 months.

On the basis of above-mentioned we kindly ask you to explain the following:

- 1) Whether Company A and Company C are interrelated persons?
- 2) Whether the services provided by Company A and Company C are related projects?
- 3) Whether the definition of period of providing services of Company A as a total of periods of providing services of Company A (264 days) and Company C (134 days) is lawful, taking into account the fact of ownership of the Company A 40 % shares of Company C?
- 4) If the services provided by Company A and Company C are related projects whether the taxation of income of Company A in State B by the reason of formation of permanent establishment in accordance with Article 5 of DTA is lawful?

Tax Committee of the Ministry of Finance of the Republic of Kazakhstan takes an opportunity to resume to Organization for Economic Co-operation and Development the assurances of its highest consideration and hopes on further mutual cooperation.

Enclosure: scheme on 1 sheet.

Sincerely,

**Deputy Chairman  
Tax Committee  
Ministry of Finance  
Republic of Kazakhstan**



**T. Botakanova**

