Korpus Prava

#1 / Winter, 2020

Analytics

Tax & Law Journal for Top Executives

Amendments in Legislation Enforced in 2020

Co-publisher

Special Instance, Professional Representation, Continuous Cassation and Other Changes in the Process

Ongoing Search for a Beneficial Owner of Income: Overview of Recent Court Decisions for 2019

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МГЮА

Dear readers,

Welcome to the pages of this year's first issue of Korpus Prava.Analytics.

As usual, in our winter issue, we highlight numerous changes that have been introduced into legal regulations of the Russian legislation this year. For instance, you will find a complete updated list of income exempt from income tax and learn about the features of the law regulating relations arising from investing through crowdfunding that comes into force.

In the article written by Anna Senchenko, Leading Lawyer, you will get answers to frequently asked questions about Cyprus, namely: why to become a Cyprus tax resident and how to do it, what are the features of transfer pricing on the island, what are the conditions subject to which a foreign company is considered to be controlled.

Last year, the currency legislation underwent a number of changes — amendments were made twice. The article written by Tatiana Frolova, Leading Lawyer of Korpus Prava Private Wealth, where all innovations are described in details — those that entered into force in 2019 and those to be adopted in 2020 — will help you deal with those changes.

In addition to legal practice, in this issue you will also find out about innovations concerning accounting and taxes that were summarized by Viktoria Dordzhi-Goryaeva, Audit Practice Specialist.

I hope that the materials of the issue will be most useful for you and your business. We look forward to your suggestions and questions that we will try to analyze in our next issue or news article on our website / Facebook page.

Have a nice and useful reading!

Artem Paleev
Managing Partner
Korpus Prava

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Irina Otrokhova
Chief Compliance Officer
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AML 5, or Nice to Meet You

On May 30, 2018, the European Union issued Directive 2018/843 amending EU Directive 2015/849 dated 20.05.2015 (the so-called AML 4 Directive), as well as previous AML directives on countering the use of financial systems for the purposes of money laundering and terrorist financing. This document is abbreviated as the AML 5 Directive (Anti-Money Laundering Directive).

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Julia Vints
Director
IFRS Practice
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There Is No Profit But There Are Taxes!

Tax profit shall be understood to mean the difference between income and expenses which forms the tax base. Tax profit can be fundamentally different from accounting profit. In this article, we will consider situations that are not so obvious but occur quite often, like when a company incorporated in Cyprus has differences between accounting profit and tax profit.

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Ekaterina Sechkareva
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Special Instance, Professional Representation, Continuous Cassation and Other Changes in the Process

In 2019, major changes for the recent years — the so-called procedural revolution — took place. On October 1, three key laws that reform the system of general jurisdiction courts and change the rules of court procedure came into force. The procedural reform is aimed at strengthening the independence of judges and increasing the effectiveness of justice.

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Ongoing Search for a Beneficial Owner of Income: Overview of Recent Court Decisions for 2019

The past year of 2019 was quite rich in tax disputes concerning the issues of determining and qualifying a beneficial owner of income. In this article, we offer a review of key court decisions made in 2019. At the same time, we will only pay attention to the arguments made by regulatory authorities and courts.

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FAQ on Cyprus

Why would one want to become a tax resident of Cyprus? How could one become a non-domiciled tax resident of Cyprus? Answers to these and many other questions regarding residency, controlled foreign companies, and transfer pricing in the Republic are described in detail on the pages of the article.

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Tatiana Frolova
Leading Lawyer
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New Year — New Rules

2019 has become a certain turning point for the currency legislation, as the rules of the game changed twice. One of the innovations that completely changed the current practice was the introduction of liability for illegal currency transactions in the form of a fine amounting to 75 to 100 % of the amount of the currency transaction.

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Roman Moskovskikh
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Review of Russian Legislative Changes in 2020

In the traditional annual review article devoted to innovations in the legislation of the Russian Federation, we have collected for you the most interesting short stories of the Russian legislator that will come out in 2020.

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Viktoria Dordzhi-Goryaeva
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What Has the Year of the Rat Prepared for Accountants?

One of the main changes is that accounting statements, starting from the statements for 2019, will need to be submitted to a tax authority at the place of registration of the entity as an electronic document only. The same applies to audit report thereon if the accounting statements are subject to mandatory audit.

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The national international private law development: Resolution of the Plenum of the Supreme Court of the Russian Federation on the application of international private law

2019 was full of events in the legislative and enforcement spheres. Novation has affected particularly the scope of international private law: on 9 July 2019 Russian Supreme Court Plenum Resolution for the first time clarified key international private law issues (in international private law enforcement sphere).

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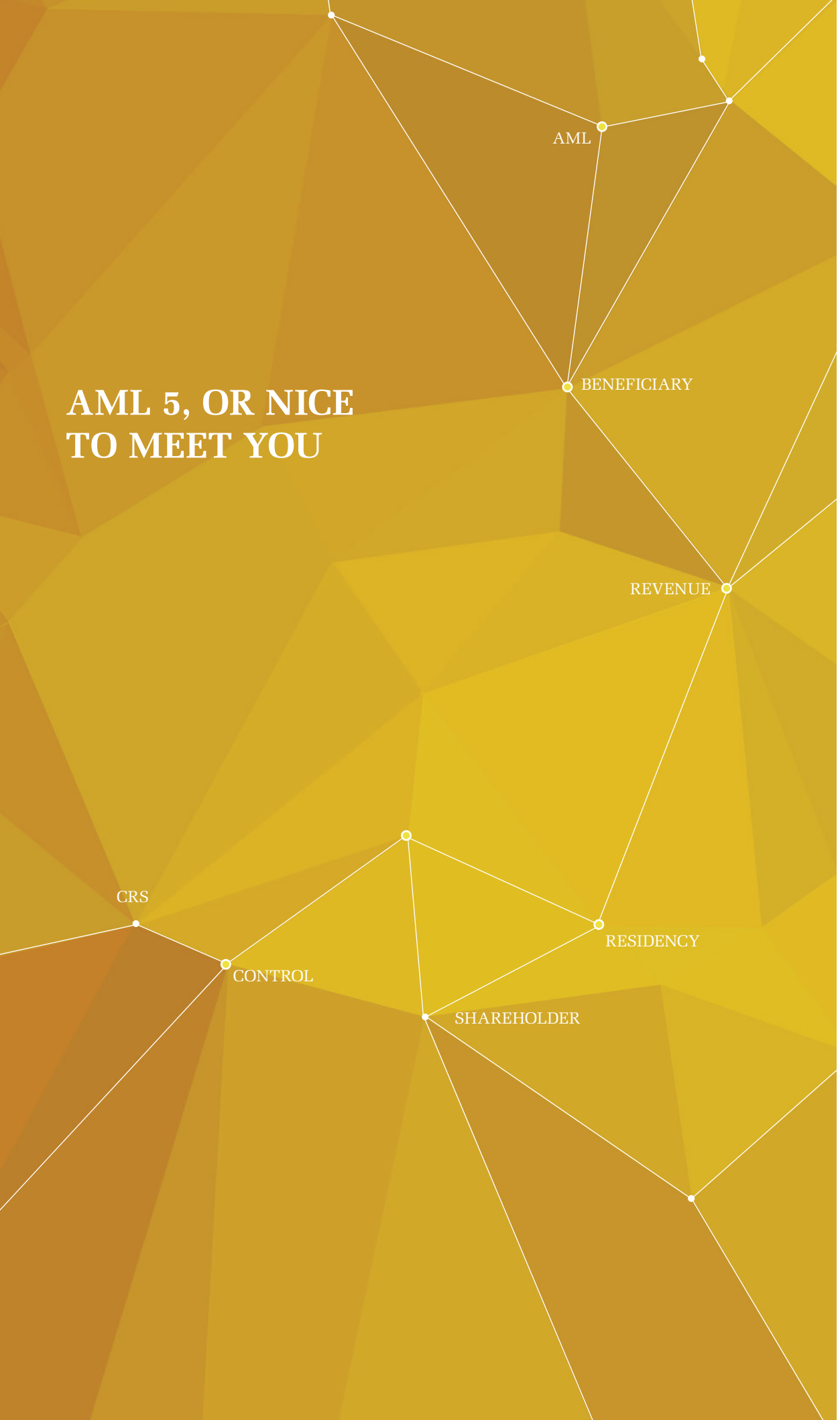

AML 5, OR NICE TO MEET YOU

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Rumors regarding the introduction of an electronic register of beneficiaries in European jurisdictions have been around for a long time and finally, they have become real. On May 30, 2018, the European Union issued Directive 2018/843 amending EU Directive 2015/849 dated 20.05.2015 (the so-called AML 4 Directive), as well as previous AML directives on countering the use of financial systems for the purposes of money laundering and terrorist financing. This document is abbreviated as the AML 5 Directive (Anti-Money Laundering Directive). Jurisdictions of the European Union that fall within its scope should bring local laws in compliance with this Directive by January 10, 2020.

The AML 4 Directive issued in 2015 also requires to keep a register of beneficiaries by various legal entities that provide financial services, but the register was individual for each client or company, was kept in internal files of the person that provided the service, and was only available for inspection at the request of regulatory authorities (such as the police, Securities and Exchange Commission, etc.). The register of beneficiaries provided for by the AML 5 Directive is absolutely different, since it is the unified electronic register, which may be accessed by a much larger number of persons.

First of all, let us remind ourselves who is considered to be a beneficial owner. The AML 4 Directive provides the definition of the beneficial owner. In accordance with section 3 (6) the beneficial owner is an individual who exercises real control over a company. In case there are several shareholders in the company, the beneficial owner is an individual who owns 25% of the shares plus one share of the company (or more). In case such person is not identified, the beneficial owner is an individual who actually manages the company (for example, the director general or managing director).

What will the electronic register of beneficiaries look like? Based on the provisions of the AML 5 Directive, a national register containing information about beneficiaries should be created, which will be publicly accessible subject to certain aspects. An unconditional access to the register of beneficiaries shall be granted to regulatory authorities (such as tax authorities, Securities and Exchange Commission, and other regulatory authorities that are responsible for preventing and combating money laundering and terrorist financing). Each of the member states of the European

Union shall resolve at its own discretion on register accessibility for other entities. The AML 5 Directive specifies that in order to use the system it is possible to set a requirement for registration in the system and payment for its use. Information about beneficiaries shall be kept in the register of beneficiaries for at least 5 years, but no more than 10 years after the company ceases to exist. The Directive also provides for the exchange of data between the member states of the European Union via the European Central Platform established by European Union Directive (EU) 2017/1132.

It should be noted that the requirement to enter information about beneficiaries applies not only to companies, but also to trust structures and financial organizations for all accounts, except for brokerage ones, and safety deposit boxes. The register of beneficiaries for companies should be available for data entry from January 10, 2020; the register of beneficiaries for trust structures should be available for data entry from March 10, 2020; the register of beneficiaries for accounts should be available for data entry from September 10, 2020. The information exchange via the European Central Platform should be available from March 10, 2021.

When it comes to companies, the electronic register of beneficiaries will include such information as the name, date of birth, company, country of residence and citizenship, nationality and percentage of beneficial ownership. For trust structures, the electronic register of beneficiaries will include information about attorneys, trust founders, beneficiaries or other persons exercising control over the trust, and protectors, if any. Moreover, the electronic register of beneficiaries will include the following information about the accounts: name or unique identification number, IBAN number, date of opening and closing of the account; for safety deposit boxes — the name of the person renting a deposit box or individual identification number. It is assumed that regulatory authorities will be given access to all information, while other persons may be provided with limited information.

This article briefly covers the main provisions of the AML 5 Directive concerning the electronic register of beneficiaries, but the lack of practice in this area should be taken into account, so it is premature to talk confidently about how the electronic register of beneficiaries is going to work in any jurisdiction. It is obvious that the transparency inherent to jurisdictions with a common law system will almost cease to exist upon the introduction of the AML 5 Directive, particularly with the already existing automatic exchange of tax information (Common Reporting Standard / CRS).

Given the fact that European legislators are moving forward, and the European business community is waiting for the AML 6 Directive in the near future, it is always better to seek the advice of qualified specialists on the arrangement of business processes and the choice of jurisdiction for business.

THERE IS NO PROFIT BUT THERE ARE TAXES

Julia Vints
Director
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Accounting profit is arguably one of the main indicators of financial position of an organization. However, information about it does not make it possible to get an idea of the amount of income tax. Accounting profit includes all income and expenses of a company without exception, not taking into account any peculiarities of tax laws of the country of incorporation of the company.

Tax profit shall be understood to mean the difference between income and expenses which forms the tax base. Tax profit can be fundamentally different from accounting profit. A simple example for a Cyprus company is dividends received or profit from sales of securities which make it into accounting profit but not into tax profit.

In this article, we will consider situations that are not so obvious but occur quite often, like when a company incorporated in Cyprus has differences between accounting profit and tax profit.

1. As in many other jurisdictions, Cyprus has a rule under which expenses not related to generating income (note: taxable income) are not taken into account in calculation of corporate income tax. Such expenses particularly include rental costs for premises/equipment the use of which is not related to activities of a company. Another example is broker's fee for transactions on sale and purchase of securities. Since profit from sales of securities is exempt from taxation, expenses will not be taken into account when calculating the tax base.
2. The next difference that occurs in activities of virtually any company concerns exchange differences. They are realized and unrealized.

   Realized exchange difference is exchange difference arising as a result of changes in exchange rates in the course of a certain transaction (currency conversion, repayment of debts/credits/loans/interest on loan obligations denominated in foreign currency, etc.).

   Unrealized exchange difference is exchange difference arising in revaluation of funds in foreign currency accounts, assets and liabilities under contracts entered into in foreign currency at the end of the reporting period.

   All unrealized exchange differences, both positive and negative, are excluded from the tax base in tax calculation.
3. Differences in calculation of accounting and tax income are also caused by transactions concerning forgiveness

of debts and loans in full or in part, both granted and received. These transactions usually arise between related parties.

	Accounting profit	Tax profit
Forgiveness of receivables or assignment with discount	Expenses are recognized in full	Notional interest on income in the form of lost profits is accrued
Forgiveness of payables or assignment with discount	Income is recognized in full	Forgiveness income is not included into the tax base (does not affect tax profit)*
Forgiveness of loans granted or assignment with discount	Expenses are recognized in full	Notional interest on income in the form of lost profits is accrued, i.e. loan interest actually continues to be accrued even after forgiveness
Forgiveness of loans received or assignment with discount	Income is recognized in full	The loan principal is not included into the taxable base.* But interest expenses recognized in prior periods must be reversed, i.e. increase tax profit

Accrual of so-called notional interest is associated with adherence to the arm's length principle set forth in Article 33 of the Income Tax Law 2002.

In the event of financing/provision of loans to related parties, transactions must be made at arm's length. Otherwise, Cyprus tax authorities reserve the right to introduce tax adjustments to reflect deviations from this principle. This is usually done in the form of notional interest and/or waiver of certain interest expenses.

That is, when the conditions of two related companies in their commercial or financial relations differ from those of independent parties, any profit that should have been accrued (provided that the same conditions are applied as those of independent parties) can be included into the company's profit and be taxed with corporate tax at the rate of 12.5% accordingly.

For companies whose primary activities are receipt and provision of loans, the fact of excess of interest expenses over interest income would be considered suspicious. It is worth mentioning the loan interest limitation rule (exceeding borrowing costs, EBC). On April 25, 2019, the Law 63(I)/2019 on implementation of the EU Anti-Tax Avoidance Directive (ATAD) 2016/1164 came into force in Cyprus. Under this rule, excessive borrowing costs are deductible in the amount of up to 30% of EBITDA (Earnings before interest, taxes, depreciation and amortization). The said rule has a number of exceptions, namely:

- A minimum threshold has been set (excessive borrowing costs of up to 3 million euros can be deducted);
- The rule does not apply to loans issued before June 17, 2016 and other loans.

4. Receivables that remain outstanding for several reporting periods often lead to additional tax charge.

According to IFRS (International Financial Reporting Standards), it is important to adhere to the concept of time value of money. Obviously, 5 million rubles now and 5 million rubles in 3 years' time is not quite the same amount. Therefore, if a company has receivables and takes no action get its money back for several years, it is not about the receivables but about financing received, most likely, from a related party, i. e. an interest-free loan.

In this case, it would be right to discount 5 million rubles, that is, calculate the equivalent amount at the time being and reflect financial income each year in the same manner as if an interest loan were issued. In this case, there is no difference between accounting profit and tax profit.

However, this approach is unpopular in practice. Company management cites a lack of information on maturities and professional judgment. Still, there is no way to avoid recognition of income in Cyprus. In the event of an audit, the auditor or tax authorities accrue notional earnings. That is, financial income will not be recognized in accounting profit but will be included into tax profit based on the same arm's length principle.

It is possible to avoid the accrual of notional interest if evidence is provided that the debt is defaulted (not recoverable) according to the classification from IFRS 9 standart "Financial Instruments".

It is mentioned in the standard that accountants can use their professional judgment, however, in practice, the auditor and tax authorities request a court ruling or other documents confirming bankruptcy/liquidation of the debtor in English or in Greek.

Until the asset is recognized as defaulted, it is necessary to accrue financial income whether it is a "hung" receivable or a loan. If there are no supporting documents, bad debt provision which reduces accounting profit but does not affect the tax base shall be recognized in accounting.

Thus, the lack of profit in accounting does not guarantee that a company will not have tax liabilities, and vice versa. The company may have both large accounting profit and tax loss. To avoid any unpleasant surprises in preparation of financial statements, it is very important to understand the impact of a business transaction on taxable profit in view of nuances of tax legislation. A

* — according to audit and judicial practice, not fixed at the legislative level

SPECIAL INSTANCE, PROFESSIONAL REPRESENTATION, CONTINUOUS CASSATION AND OTHER CHANGES IN THE PROCESS

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In 2019, major changes for the recent years — the so-called procedural revolution — took place. On October 1, three key laws that reform the system of general jurisdiction courts and change the rules of court procedure came into force:

1. Reformation of the judiciary system — Federal Constitutional Law No. 1-ФКЗ On Introduction of Amendments to Federal Constitutional Laws Due to Formation of General Jurisdiction Courts and General Jurisdiction Courts of Appeal dated 29.07.2018.
2. Reformation of the judiciary system — Federal Law No. 451-ФЗ On Introduction of Amendments to Certain Legal Acts of the Russian Federation dated 28.11.2018.
3. On class actions — Federal Law No. 191-ФЗ On Introduction of Amendments to Certain Legal Acts of the Russian Federation dated 18.07.2019.

The procedural reform is aimed at strengthening the independence of judges and increasing the effectiveness of justice. Among the main innovations are the following: formation of new courts, continuous cassation in general jurisdiction courts, introduction of educational qualification for representatives, changes in the procedure for issuing writs of execution, the possibility to file class actions.

Let us consider these innovations in detail.

Formation of new courts

On October 1, 2019, 5 courts of appeal and 9 courts of cassation officially started their work. Each of the new courts operates within the respective judicial district which includes several regions. The territorial jurisdiction of each general jurisdiction court of cassation includes 7–13 constituent entities of the Russian Federation, and the jurisdiction of each general jurisdiction court includes 14–21 constituent entities of the Russian Federation.

The innovation lies in extraterritoriality — judicial districts of appeals and cassations do not match the administrative structure of the country which will make it possible to increase the independence of judges.

New courts of appeal review cases that are resolved by courts of constituent entities at the first instance (Supreme Courts of the republics, regional courts, territorial courts). They are also in charge of disputes over new or newly discovered

circumstances. The new courts of appeal will also be higher courts in relation to Supreme Courts of the republics, regional courts, etc. operating in the territory.

In a similar fashion, general jurisdiction courts of cassation also consider cases as courts of cassation on new or newly discovered circumstances. They are higher courts in relation to general jurisdiction federal courts and magistrate judges operating in the territory of the relevant judicial cassation district.

The judicial reform also provides for the possibility to participate in consideration of petitions of appeal and cassation remotely subject to the relevant motion via a video conferencing system.

Continuous cassation

On the proposal of the Supreme Court, the conceptual approach to cassation justice has been changed. One of the main innovations is introduction of the so-called continuous cassation, which is customary for arbitral proceedings, in general jurisdiction courts. Appeals are now considered in courts without any prior selection. Previously, this issue was put at the discretion of the court of cassation judge who might not have not always forwarded the appeal for consideration. Formerly, only a small number of appeals reached the court of cassation. Thus, according to the Supreme Court, in 2018, among the petitions of cassation filed to presidiums of regional courts, about 10% of appeals on criminal cases, 5% of appeals in civil cases and 4% of appeals on administrative cases were considered at court hearings.

According to the reform ideologues, the innovation will make it possible to replace the selective verification of court decisions with the mandatory one and increase the independence of courts since new courts have been formed in specially established districts that do not match the administrative structure.

Educational qualification for representatives

Legal representation becomes professional. The reform has established requirements for representatives in courts — now they can only be lawyers and persons with a higher legal education, academic degree. Now, in the process, in addition to a power of attorney, a representative is required to present their diploma of a higher legal education or confirmation of a legal academic degree.

This rule shall apply to arbitral, civil and administrative proceedings. However, it is possible to litigate at magistrate judges and in district courts. The educational qualification shall not apply to patent attorneys on disputes concerning intellectual property protection, insolvency practitioners on bankruptcy cases. It is noteworthy that the new requirements shall also not apply to statutory representatives. For instance, a director general would not have to get a legal education or degree to represent the interests of their company in court.

Writ proceedings

Since October, the number of cases has grown in arbitral and civil proceedings where it is required to file an application for issue of a court order instead of filing an action.

Changes in the Arbitration Procedure Code

The maximum amount of claims arising from non-performance or improper performance of an agreement has increased from 400,000 to 500,000 rubles. The mention of the fact that a debtor acknowledges but does not fulfill documents establishing monetary obligations has been excluded.

In a similar fashion, the amount of claims based on a notarized protest of a promissory note for non-payment, non-acceptance and non-dating has increased.

Changes in the Code of Civil Procedure

An application for issue of a court order must be filed concerning requirements on recovery of a debt not more than 500,000 rubles:

- On any communication services (not just telephone communication services as before);
- On expenses for complete overhaul and maintenance of common property in a multi-unit apartment building;
- On mandatory payments and contributions made by members of any property cooperative (not just housing cooperatives as before);
- On mandatory payments and contributions made by members of any consumer cooperative (not just building cooperatives as before).

Writs of execution issued upon application

Procedure for issuing writs of execution has changed. Under the new rules, in civil and arbitral proceedings, writs of execution will be issued upon application of the recoveror. An application is not required if a writ of execution is needed to recover money to the budget. Such rule has been established in a similar manner to the applicable provision of the Administrative Procedure Code in consideration of administrative cases.

Class actions

From October 2019, individuals can file class actions to general jurisdiction courts. Previously, this option was available only to entrepreneurs in arbitral proceedings. Under the old rules, it was possible for individuals to file class actions to general jurisdiction courts only when they were initiated by consumer protection associations, the prosecutor's office or local authorities. Those who were not entrepreneurs could not file an action for the benefit of a group of persons, and consumers could only combine actions of the same type in court, but the actions were considered separately, other individuals were not able to join the actions. New law No. 191-ФЗ introduces amendments to the Arbitration Procedure Code and the Code of Civil Procedure and re-starts the class action institution in Russia.

What should be known?

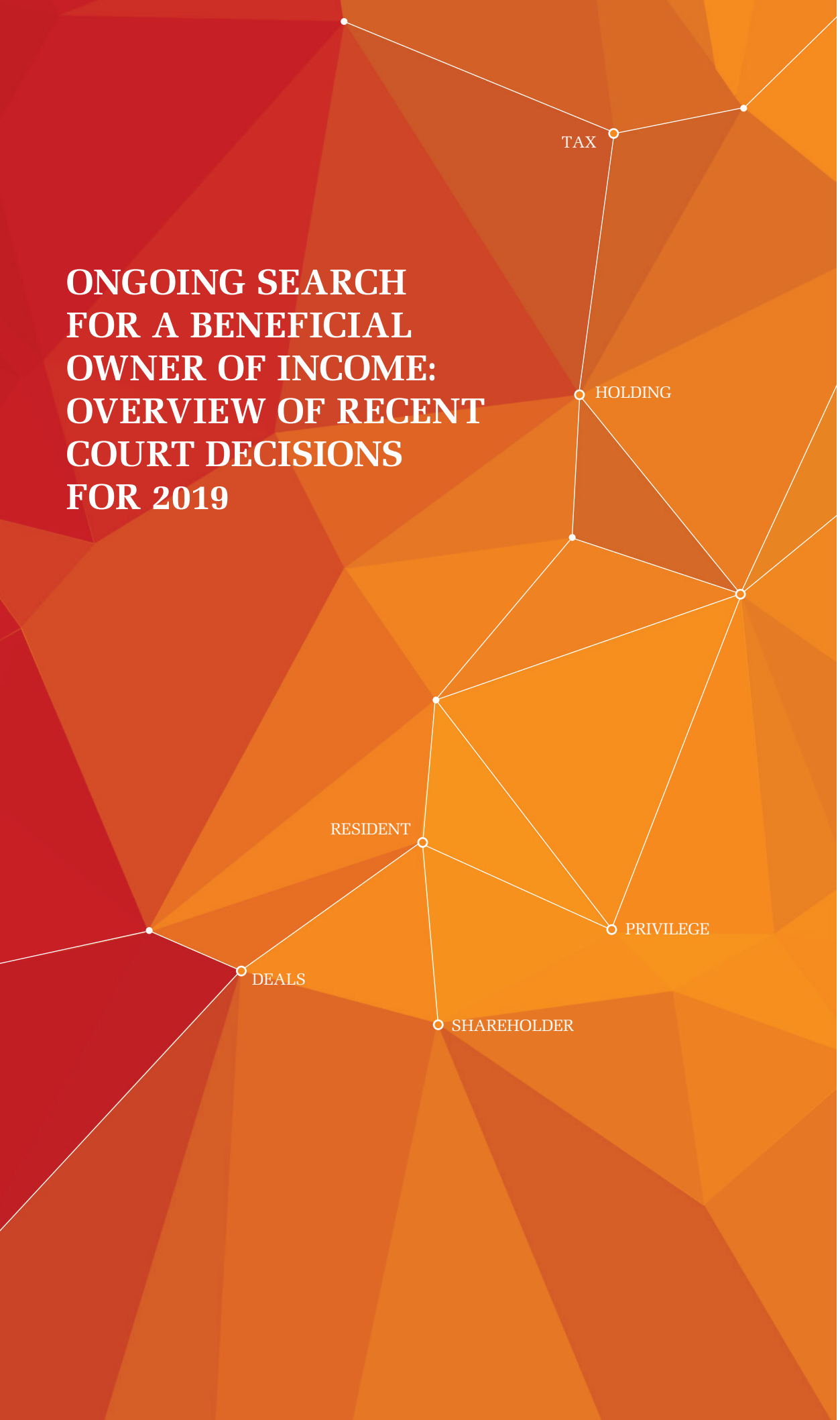
1. Terms of filing a class action:
   - Common defendant;
   - Similar factual circumstances of the action;
   - Common or uniform rights of members of a group of persons/entities;
   - The uniform way to protect rights.
2. Who can file a class action?

   To protect the rights of a group, one of its members may file a class action, and in certain cases stipulated by law it may be another person/entity (for instance, a consumers' association).
3. Is it possible to join the group?

   Yes, it is. It can be done in filing of the statement of claim or during consideration of the action. An application must be filed to court or a form must be filled in on the court website or in the Justice State Information System.
4. Are decisions on class actions important for other similar actions?

   Yes, they are. Such a decision has prejudicial value. The exception is a situation when plaintiffs dispute previously established facts.

ONGOING SEARCH FOR A BENEFICIAL OWNER OF INCOME: OVERVIEW OF RECENT COURT DECISIONS FOR 2019



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The past year of 2019 was quite rich in tax disputes concerning the issues of determining and qualifying a beneficial owner of income. In this article, we offer a review of key court decisions made in 2019. At the same time, we will only pay attention to the arguments made by regulatory authorities and courts. If required, one may closely review each case by using the details of court rulings specified in the article.

Case of Krasnobrodsky Yuzhny LLC

Ruling No. 304-КГ18-22775 of the Supreme Court of the Russian Federation dated 18.01.2019 in case No. A27-331/2017 of Krasnobrodsky Yuzhny LLC to Interdistrict Inspectorate No. 3 of the Federal Tax Service of the Russian Federation for the Kemerovo Region.

Factual allegations

The Russian LLC paid dividends in favour of its shareholder (Cyprus company) at the reduced rate (5%) under the agreement.

Content of the decision

In the case in point, the courts have concluded that none of the Cyprus com-

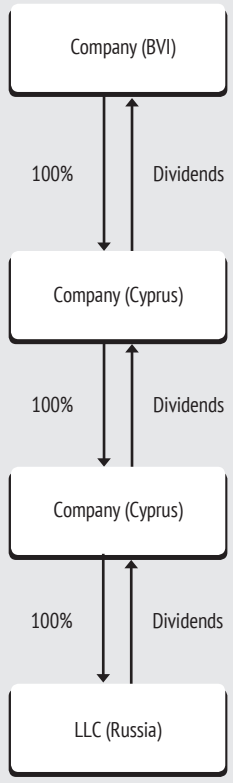

Fig. 1

panies operates in Cyprus, and therefore, the Cyprus company (LLC member) is not a beneficial owner of income, but a conduit company.

Therefore, the preferential rate under the agreement (5%) shall not be applied.

The courts (tax authorities) paid attention to the following facts:

- The Cyprus company does not dispose of the funds received as dividends in full (less current administrative expenses);
- The Cyprus company further reallocated dividends received from Russian companies to other founders (Cyprus, BVI);
- One of the further founders also registered in the territory of the Republic of Cyprus did not carry out financial and economic activities and reallocated dividends received in full (less current administrative expenses) further to its founders, which shows that none of the entities under the jurisdiction of the Republic of Cyprus carried out actual business activities;
- There were no transactions defining business activities of the Cyprus company;
- Independent auditor's reports, according to which the Cyprus company depends on the constant financial assistance of its shareholders, without which there would be a debt, which would not allow the companies to continue as a going concern and fulfill their obligations on the current activities.

Case of Melnik JSC

Ruling No. 304-КГ18-25280 of the Supreme Court of the Russian Federation dated 18.02.2019 in case No. A03-21974/2017 of Melnik JSC to the Interdistrict Inspectorate of the Federal Tax Service of Russia for the largest taxpayers of the Altai territory.

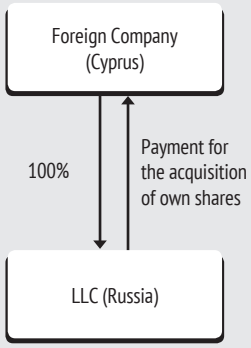

Fig. 2

Factual allegations

The Russian LLC paid dividends to its sole shareholder, which is a foreign company, disguised as the transaction to redeem its own shares under the securities sale and purchase agreement.

Content of the decision

The court has concluded that, as a result of the above actions, a part of the profit has been withdrawn in favour of a foreign legal entity, while the scope of rights of the foreign company in relation to the company has not changed. And since the payment of passive income (dividends) has taken place in this case, the Company should have withheld tax at source.

The courts (tax authorities) paid attention to the following facts:

- The company has had significant retained earnings and has paid no dividends to its shareholders for several years;
- The foreign company had become the shareholder of the company shortly prior to disputable transactions were made (with the share of 99.86%, subsequently 100%);
- Immediately after the conclusion of the share sale and purchase agreement, the foreign company opened a bank account with the resident bank of the Republic of Latvia, to which the funds were transferred with the comment "redistribution of funds within the holding";
- The court of appeal annulled the decision of the first instance court on invalidation of the decision of the tax authority, and concluded that, as a result of the above actions, a part of the profit has been withdrawn in favour of a foreign legal entity, while the scope of rights of the foreign company in relation to the company has not changed;
- The foreign company, which is the sole shareholder of the taxpayer during the audited period, had limited powers with respect to the disposal of the income received;
- There were no transactions defining business activities,
- The foreign company obtained no benefit from the income and had no saying in defining its future economic fate;
- Coordination of actions between the taxpayer and its sole shareholder.

Case of Ruscam Steklotara Holding LLC

Ruling No. 301-ЭС19-2319 of the Supreme Court of the Russian Federation dated 25.04.2019 in case No. A11-9880/2016 of Ruscam Steklotara Holding LLC to the Interdistrict Inspectorate of the Federal Tax Service for the largest taxpayers in the Vladimir region.

Factual allegations

The Russian LLC paid dividends in favour of its shareholder (Dutch company) at the reduced rate (5%) under the agreement.

Content of the decision

The courts have determined that the company, which is a resident of the Netherlands, is not a beneficial owner of the dividends paid by the company; it is only an intermediate (technical) link and is not the ultimate beneficiary of the income received on its account, which is transferred in transit to the address of two entities registered in Turkey. The Turkish company (ultimate shareholder)

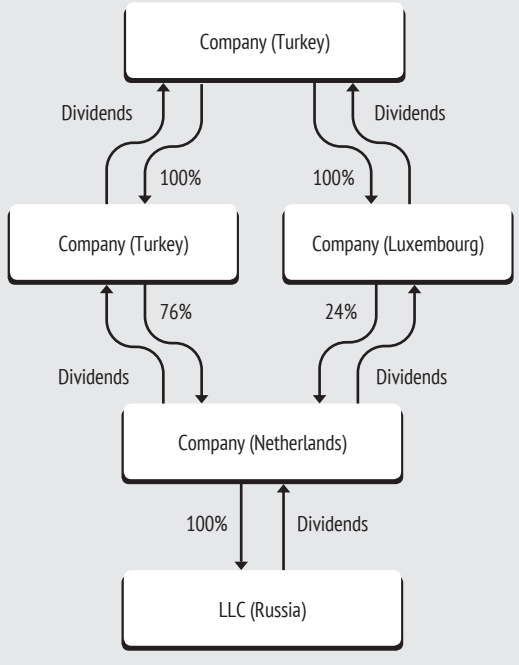

Fig. 3

has been recognized as the ultimate beneficiary.

The courts (tax authorities) paid attention to the following facts:

- Dutch tax authorities have provided information that the Dutch company acts as an intermediate holding and investment company;
- Average staff number of the Dutch company is 0 persons;
- The company, which is a resident of the Netherlands is a member only of the company;
- The director of both the company, which is a resident of Turkey, and the company, which is a resident of the Netherlands, is the same individual;
- Activities of the Dutch company and other companies as part of the funds transfer have been controlled by the Turkish holding company;
- According to the financial statements of the Dutch company for 2012 - 2013 (submitted by the Dutch tax authorities), the only income of the company is dividends from the company, and the fixed assets are the shareholders' funds, which serve as a source for the company's share capital;
- In 2011-2012, the company incorporated in the Netherlands paid no taxes due to the carry forward of losses of previous years; in 2013, it recorded minimum taxes payable; in 2014, it recorded no taxes payable, as well as the dividend income for 2014;
- According to the settlement account statement of the company, which is a resident of the Netherlands, all dividends received from the company were transferred within a few days to the accounts of foreign companies which have no direct participation interest in the company.

Case of Extra CJSC

Decision of the Arbitration Court of the Ivanovo region dated 19.07.2019 in case No. A17-11142/2018 of Extra CJSC to Interdistrict Inspectorate of the Federal Tax Service for Ivanovo (Regulation of the Second Arbitration Court of Appeal dated 15.11.2019 kept the decision without amendments).

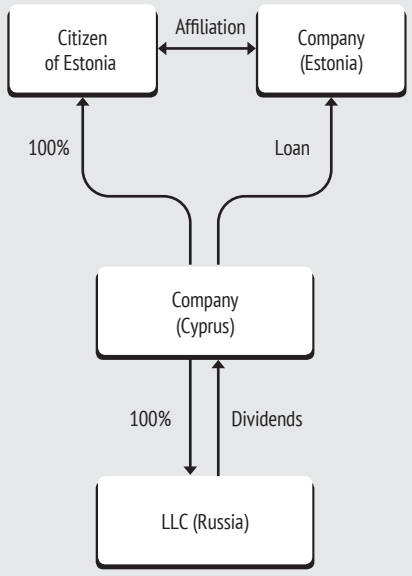

Fig. 4

Factual allegations

The Russian LLC paid dividends in favour of its shareholder (Cyprus company) at the reduced rate (5%) under the agreement.

Content of the decision

In the case in point, the courts have concluded that the Cyprus company does not operate in Cyprus, and acts as a transit company used solely for transferring funds to the UK.

Therefore, the preferential rate under the agreement (5%) shall not be applied.

When making a decision on additional taxes, the tax authorities considered the following circumstances:

- The authorized capital of the Russian company increased with the help of borrowed funds raised by the Cyprus company;
- Absence of interest payment terms in the loan agreements indicates that the Cyprus company had no intention to receive any income;
- The Cyprus company was registered in January 2013, and in the same year (in August) acquired shares of the Russian company, which indicates the technical nature of the company;
- As part of international cooperation, the tax authority provided a settlement account statement of the Cyprus company issued by an Estonian bank, which indicates that all the funds were subsequently transferred as loans to Estonian companies affiliated with the Cyprus company;
- According to the information provided by the Cyprus tax authorities, the Cyprus company had no employees other than its director;
- The authorized capital of the Cyprus company (EUR 1000.00) was not paid by the shareholder;
- The Cyprus company acquired shares of the Russian company from its founder (Estonian citizen), and the payment under the sale and purchase agreement was not made;
- The income of the Cyprus company consists only of dividends (99.9%), the remaining income is interest on loans granted to affiliated companies;
- Loans were granted solely for the purpose of creating visibility of transactions;
- All activities of the Cyprus company were limited to receiving dividends and granting loans in favor of affiliated companies.

Case of KCA Deutag Drilling LLC

Decision of the Arbitration Court of the Sakhalin region dated 01.08.2019 in case No. A59-8433/2018 of KCA Deutag Drilling LLC to Interdistrict Inspectorate No. 1 of the Federal Tax Service for the Sakhalin region (Regulation of the Fifth Arbitration Court of Appeal dated 25.12.2019 kept the decision without amendments).

Factual allegations

The Russian LLC paid dividends in favour of its shareholder (Dutch company) at the reduced rate (5%) under the agreement.

Content of the decision

In the case in point, the courts have concluded that the Cyprus company operates in Cyprus, and does not act as a transit company used solely for transferring funds to the UK.

Therefore, the preferential rate under the agreement (5%) is legally valid.

When making a decision on additional taxes, the tax authorities considered the following circumstances:

- The ultimate shareholder (parent company) was a company registered in the UK;
- The current account of the Cyprus company to which the dividends were transferred was opened in the UK.

When making a decision to annul the decision of the tax authority, the court took into account the following circumstances:

- The Cyprus company allocated the money received as dividends to a company registered in Germany;

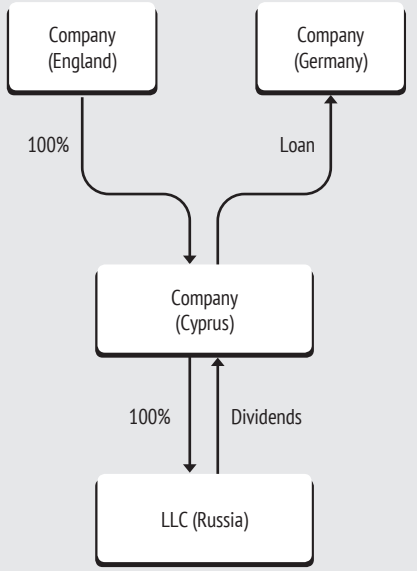

Fig. 5

- The Cyprus company paid taxes in Cyprus on interest income received in 2014–2017;
- According to the calculations submitted, if the Russian company directly granted a loan to the German company (bypassing the stage of paying dividends to Cyprus), the total amount of taxes payable in Russia would be less than the actual amount (accordingly, the payment of dividends is not a transaction generating a tax benefit);
- The Cyprus company was incorporated in 2003, conducted real business activities (providing corporate support services to other companies), owned other assets in addition to the Russian subsidiary;
- The decision to transfer dividends to the settlement account in the UK (rather than Cyprus) was caused by a large-scale crisis in Cyprus, which was accompanied by freezing of accounts;
- During the period under consideration, the Cyprus company adopted no resolutions on the distribution of dividends in favor of the English company;
- The case file provides no evidence of the actual receipt of distributed dividends by the English company;
- The loan was granted in US Dollars, while the accounts of the Cyprus company are kept in Euros; by granting a loan in another currency, the Cyprus company was exposed to currency risks (exchange rate risk);
- The Cyprus company also bears an additional risk of non-repayment of the loan (after receiving dividends, the Cyprus company independently disposed of its asset by allocating it to receive interest income);
- The Cyprus company paid all necessary taxes in the Republic of Cyprus;
- According to the testimony of the witnesses, all instructions were received not from the management of the Russian company, but from the directors of the Cyprus company;
- The Cyprus company bears administrative expenses at its own cost (wages of employees, directors' remuneration, legal and consulting services, office rental costs);
- Dividend income is recognized by the Cyprus company in its financial statements;
- In addition to the share in the Russian company, the Cyprus company had other assets (accounts receivable on loans granted).

Summary

The review of the most recent court decisions shows that:

- Court practice related to the application of the concept of the beneficial owner of income has not changed. Courts continue to pay due and close attention to this issue and consider all circumstances to verify the beneficial owner of income;
- No new circumstances / indicators / evidence, which tax inspectors and courts rely on when investigating the issue of qualification of a foreign entity as the beneficial owner of income (compared to previous court decisions and letters of the Ministry of Finance) have appeared;
- Most cases relate to the period of 2010–2015, i. e. the period when due court practice on these issues has not yet been formed, and taxpayers paid no due attention to the issues of documenting the form and content of transactions with foreign companies. This may be the reason for not making decisions in favor of taxpayers in most cases;
- The first court decisions made in favor of taxpayers give some hope that in the near future taxpayers will take a more responsible approach to documenting transactions with foreign counterparties, which will help to improve the judicial practice.

FAQ ON CYPRUS

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Non-domiciled tax resident of Cyprus: why and how?

Why would one want to become a tax resident of Cyprus?

Before spending time on studying the theory, practice, and even more so, on monitoring changes in the Cyprus tax legislation, the first things you need to do is to decide whether you need it at all.

The question why it is particularly important to become a non-domiciled tax resident is answered in the table below. It shows tax effects for Russian tax residents and Cyprus tax residents, both domiciled and non-domiciled.

The table shows tax effects of receiving income in the form of dividends / loan interest in the amount of, for example, EUR 100 from a Hong Kong company.

Thus, tax savings of non-domiciled tax residents of Cyprus is obvious. However, it should be pointed out that the table shows tax effects only for passive income, namely dividends and passive interest income (i. e. preferential tax

		Cyprus tax resident		Russian tax resident
		Domiciled	**Non-domiciled**	
Dividends	Income tax / Personal income tax	Exempted	Exempted	EUR 100 × 13% = = EUR 13
	Defence tax	EUR 100 × 17% = EUR 17	Exempted	N/A
	Total tax	**EUR 17**	**EUR 0**	**EUR 13**
Interest	Income tax / Personal income tax	Exempted	Exempted	EUR 100 × 13% = = EUR 13
	Defence tax	EUR 100 × 30% = EUR 30	Exempted	N/A
	Total tax	**EUR 30**	**EUR 0**	**EUR 13**

treatment does not apply to all types of income).

Therefore, when making a decision on one's tax residency, one should take into account tax effects for all types of income, including tax effects at the source of income payment, since some jurisdictions have provided for an increased personal income tax rate for certain types of income paid by Russian tax residents in favor of foreign tax residents. For example, when receiving a salary from a Russian company, an employer as a tax agent will have to withhold personal income tax at an increased rate of 30% of the salary paid to a foreign (in our case, Cyprus) tax resident.

How could one become a non-domiciled tax resident of Cyprus?

Amendments to the tax legislation providing for the introduction of a new test for determining the tax residence of individuals ("60-day rule") were adopted in mid-2017. The amendments have become effective retrospectively since January 1, 2017 and have been applied since the 2017 tax period (in Cyprus a tax period coincides with a calendar year).

Once the "60-day rule" becomes effective, an individual shall be considered a tax resident of Cyprus if he/she complies with one the following criteria: the existing "183 days" criterion or the new "60-day rule" during the tax period.

The "60-day rule" applies to individuals for whom all of the following conditions were met simultaneously during the current tax period:

- They have not been in any other country for a period exceeding 183 days in total;
- They are not tax residents of any other country;
- They have been in Cyprus for at least 60 days;
- They have other connections with Cyprus (they own / rent a place of residence during a long period of time and have business or are employed in Cyprus).

An individual tax resident of Cyprus shall be exempt from taxation in Cyprus in respect of worldwide income (whether derived from sources in Cyprus or from other jurisdictions) in the form of dividends and "passive" interest income, if for tax purposes such an individual is not considered to be permanently resident in Cyprus.

An individual who has no "domicile by birth" in Cyprus (Domicile of Origin) shall be recognized for tax purposes as a permanent resident of Cyprus, in case the individual was considered a tax resident of Cyprus for any 17 years out of the 20 years preceding the current tax period. The concept of "Domicile of Origin" shall be assigned at the time of birth and it usually corresponds with the domicile of the father at the time of the child birth, and in exceptional cases — with the domicile of the mother.

It should be noted that applying the "60-day rule" is more of an opportunity allowing to apply a preferential tax treatment, while living in Cyprus for 60 days or more does not automatically make an individual a non-domiciled tax resident of Cyprus.

Legislation on controlled foreign companies in Cyprus

On April 5, 2019, the Parliament of the Republic of Cyprus approved the law on the introduction of the provisions of EU Directive 2016/1164 (Anti-Tax Avoidance Directive) to the national tax legislation. The law will apply to tax periods starting from January 2019.

This Directive requires, inter alia, that countries with no provisions on controlled foreign companies in their national tax legislation shall adopt such provisions and bring them into effect by 01.01.2019.

It should be noted that regulations on controlled foreign companies apply only to Cyprus corporate taxpayers, i.e. only a Cyprus company, but not an individual, may be recognized as a controlling person.

In accordance with the law a foreign legal entity or a permanent establishment of a Cyprus company shall be recognized as controlled subject to the following conditions:

1. The ownership share of a Cyprus company in a foreign legal entity directly or indirectly amounts to at least 50%;
2. The effective income tax rate at which a foreign company or a permanent establishment pays taxes amounts to less than 50% of the amount of taxes that would be paid by a Cyprus company at its current income tax rate.

If a foreign legal entity or a permanent establishment of a Cyprus company is recognized as controlled, the tax base of the Cyprus company shall include retained earnings of the controlled foreign company.

Transfer pricing in Cyprus

On June 30, 2017, the Cyprus tax authorities issued the Circular that introduced new provisions for financial transactions between related parties (intra-group financial transactions) subject to transfer pricing standards (TP). New provisions became effective on July 1, 2017 and generally cover the arm's length principle set in accordance with TP recommendations stipulated by the Organization for Economic Co-operation and Development. The Circular applies to both current and future intra-group financial transactions.

The arm's length principle is not new for Cyprus. It has been since 2003, that in order to harmonize with the provisions of Article 9 of the OECD Model Convention, Cyprus has an active provision of Article 33 of the Income Tax Law, which stipulates that all transactions between interdependent persons shall follow the arm's length principle.

The OECD has provided its definition for the arm's length concept, and it means the following: all transactions between interdependent persons shall be carried out on market conditions, as if the parties were independent of each other and acted in accordance with their own interests only. It is important that this principle, as well as the provisions of Article 33 of the Income Tax Law, shall apply to any transactions between related parties. Therefore, according to the law, it has been since 2003 that related companies in Cyprus have been obliged to offer each other their goods and services, as well as to provide loans based on market conditions.

With the release of the Circular, companies shall not only comply with the arm's length principle, but also prepare a background statement for the selected interest rate and margin of the transaction and submit it to the tax authorities. Such analysis prepared by independent experts shall be mandatory for all intra-group financial contracts, regardless of the name the parties give to such a contract, since the above-mentioned circular further emphasizes that the actual behavior of participants to the transaction and its economic substance prevail over formal agreements of the parties.

According to the new Circular, in order to accurately determine an intra-group financial transaction, it is necessary to determine its characteristics, such as terms and functions, assets used, and risks assumed by related parties.

Once an intra-group financial transaction is accurately determined, the price shall be analyzed for compliance with the arm's length principle by comparing it to compatible transactions in the market at the time of the intra-group financial transaction, and taking into account the price that would be agreed by independent parties in a compatible transaction in the market under similar conditions ("compatibility" adjustments are possible, but they should meet internationally recognized standards).

At the same time, if a taxpayer carries out only intermediary activities for providing loans or cash advances to related parties, which in turn are financed by loans or cash advances from related parties, then simplified measures may be applied. When using "simplified measures", intra-group financial transactions shall be recognized as compliant with the arm's length principle if the return on assets net of tax amounts to at least 2%. This indicator shall be regularly reviewed by the Cyprus tax authorities. It is assumed that no TP analysis is required for the implementation of "simplified

measures". However, a deviation of the minimum return on assets net of tax of 2% is possible only in case of an appropriate TP analysis, which confirms the marketability of such a deviation. The use of "simplified measures" by taxpayers should be reflected in the taxpayer's annual tax return.

NEW YEAR — NEW RULES

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2019 has become a certain turning point for the currency legislation, as the rules of the game changed twice. Undoubtedly, this was facilitated by the initiation of the automatic information exchange, which started working and, apparently, provided the regulatory authorities with the desired information, just as intended.

Everyone knows that five years ago our compatriots who received income outside Russia had no idea that they had to pay any taxes on such income back home. The logic was simple: no one would ever know about such income. Foreign accounts were not declared, and there was no need to file any reports on them. It was also rather complicated for the tax authorities to get statements on foreign accounts of our citizens from foreign colleagues. Sometimes they had to go to court and prove that a tax resident of the Russian Federation evaded paying taxes while receiving income to a foreign account.

The first innovation that completely changed the current practice was the introduction of liability for illegal currency transactions in the form of a fine amounting to 75 to 100 % of the amount of the currency transaction.

It should be noted that at the time of the introduction of this provision, almost all currency transactions, even the receipt of interest on deposits, were considered illegal operations, since they were not provided for by the law on currency regulation.

Later legislative practice went down the road of concessions. At first, legislators allowed a minimum set of income that could still be received on foreign accounts, and over time, the list grew, but such popular types of income as return on sales of securities were still excluded from it.

A couple of years ago, return on sales of securities was included in the permitted list, but with significant restrictions and omissions, which admittedly are typical of the law on currency regulation in general.

It became possible to receive return on sales of securities that passed the listing procedure on exchanges, the list of which was determined by the Central Bank.

However, it immediately revealed a few problems. First of all, the issue of bond redemption remained unclear. In fact, redemption is not a sale and therefore, if the law is to be interpreted literally, one shall be able to sell and receive

return on sales of shares and bonds, but shall not be able to receive income from redemption.

Some experts suggest that bond redemption is the receipt of payments on them, which are allowed along with coupons and dividends, but then the Law does not explicitly mention redemption, and the price of error is very high.

The next problem associated with the receipt of return on sales of securities is listing itself. Obviously, shares are usually listed, which is not the case with bonds, let alone notes. In other words, the currency law has left the market of non-negotiable securities unaddressed, which has become another blow for people who invest in foreign markets.

The list of exchanges currently includes more than sixty exchanges, including the most popular exchanges in the world. But prior to 2019, the story of the list was quite tragic.

For example, the list of exchanges, listing on which ensured compliance with the currency legislation, included the so-called German exchange. Everything seems alright, but the strange thing is that this exchange is non-existent. There are Frankfurt, Berlin and Stuttgart exchanges, which together make up the German exchange, but there is no separate German exchange.

It was logical to assume that the Frankfurt, Berlin, and Stuttgart exchanges were all included in the permitted list under one common name. But that was not the case. The Central Bank thought differently, and the three German exchanges were not among the exchanges that needed listing, since they were not expressly included in the approved list. Thus, the German exchanges in general remained above the law.

At the moment, all three German exchanges are included in the coveted list.

The currency legislation divides not only currency transactions into legal and illegal ones. There is also a division by banks, or rather by their location.

Thus, regardless of the bank location, accounts may receive:

- Interest on the balance of funds on such accounts (in deposits);
- Funds in the currency of the Russian Federation under foreign trade agreements (contracts) concluded by such residents with non-residents.

The following funds received from non-residents may be credited to accounts:

- Paid in the form of wages and other payments related to the performance by resident individuals of their labour obligations under labour agreements (contracts) concluded by them with non-residents outside the Russian Federation;
- Paid in accordance with court decisions of foreign countries, except for international commercial arbitration decisions;
- Paid in the form of pensions, scholarships, alimony and other social benefits;
- In the form of insurance payments made by non-resident insurers;
- Paid as a refund of previously paid funds by resident individuals, including the repayment of erroneously transferred funds, the refund for the goods returned by a resident individual to a non-resident, which were previously bought from this non-resident, for the service paid to such a non-resident;
- Paid in accordance with the requirements of the legislation of a foreign country, bypassing accounts in authorized banks, in the form of return on sales of precious metals accounted for on the accounts of residents opened with banks located outside the Russian Federation.

A separate list was set for accounts opened with banks located in the territories of member states of the international organizations OECD and FATF.

This list included the most popular currency transactions. Thus, the following funds received from non-residents could be credited to foreign accounts:

- Amounts of income from leasing (subleasing) to non-residents of real estate and other property of an individual who is a resident located outside the Russian Federation;
- Funds paid in the form of accumulated interest (coupon) income, the payment of which is provided for by the terms of the issue of foreign securities belonging to a resident individual, and other income from foreign securities (dividends, payments on bonds, bills, payments upon the decrease of the authorized capital of the issuer of a foreign security);
- Funds received by a resident individual upon alienation of foreign securities that have passed the listing procedure on the Russian exchange or on a foreign exchange that is included in the list approved by the Central Bank of the Russian Federation;
- Funds paid to a resident individual in the form of income received from the transfer of funds and/or securities to trust management of a non-resident trustee, as well as the repayment of the amount of funds previously transferred by such an individual to trust management of a non-resident trustee;
- Funds received by a resident individual from a non-resident from the sale by a resident individual to a non-resident under a sale and purchase agreement of a vehicle owned by a resident individual outside the Russian Federation;
- Funds received by a resident individual from a non-resident from the sale of real estate by a resident individual to a non-resident under a sale and purchase agreement of real estate owned by a resident individual outside the Russian Federation.

Thus, the list of allowed transactions has become quite extensive, so that with due attention prevent any violation of the currency legislation.

However, given that the currency law is written in a way that is quite difficult for comprehension, the Ministry of Finance in its letter explained that if no notifications about the account are given to the tax inspectorate, then any operations on such an account shall be considered illegal.

According to the currency legislation, a notification on an account opened with a bank located outside the Russian Federation should be given to the tax authority within one month from the date of opening. Furthermore, every year until June 1, it is required to submit a report on the account activity for the previous year.

Therefore, if an individual receives income to a foreign account that is allowed by the law, but fails to provide reports on such an account, all operations on such an account shall be deemed illegal.

In this case, the logic of lawmakers is clear. Expansion of possibilities to receive income to foreign accounts requires a mechanism to monitor such income in terms of tax payments. It should be noted that there is no direct correlation between the report on the foreign account activity and the tax return. However, in case of a significant turnover on a foreign account and absence of tax return 3 NDFL (personal income tax), the tax authorities may request foreign account statements in order to make sure that an individual received no income on which he had to pay, but did not pay taxes.

The automatic exchange of tax information, which was launched in 2018, made its further adjustments to the law on currency regulation.

If we rely on the fact that all restrictions related to the receipt of income to foreign accounts were connected with a lack of transparency of such income, then automatic exchange solved this problem, and therefore, the requirements for citizens stipulated by the currency law became less stern.

The first positive innovation was announced by the legislator in August 2019.

It was the time when amendments regarding filing of reports were made to the Law. Thus, individuals whose accounts were opened with banks located in the territories of the OECD and FATF states, and whose turnover on such accounts did not exceed 600,000 rubles, were exempted from filing reports.

Furthermore, since 2020, funds received from non-residents may be transferred to accounts with such banks without any restrictions.

An additional condition was that a member state of the OECD and FATF should participate in the automatic exchange of financial information with the Russian Federation.

It would seem that everyone was waiting for this. But by the end of the year, the currency law was amended once again, and that is how it met 2020.

For the first time, the legislator recalled our former Union republics, which are now partners in the Eurasian Economic Union.

Indeed, it was rather weird to build close economic relations with Kazakhstan, Armenia, Belarus and Kyrgyzstan, while at the same time have restrictions on the use of personal accounts of Russian citizens with banks in these countries.

Thus, the EEU member states replaced the OECD and FATF member states.

Now, the OECD and FATF membership of the state is not determinative when deciding on the possibility of crediting certain income to accounts with banks located in the territory of foreign countries.

The main criterion now is the participation of the state in the automatic exchange of information in accordance with the Multilateral Agreement of the Competent Authorities on the Automatic Exchange of Financial Information dated October 29, 2014 or any other international agreement concluded with the Russian Federation that provides for the automatic exchange of financial information, which seems quite fair.

For example, Cyprus, which is so much beloved by our compatriots, is not a member of the OECD and FATF, but it participates in the automatic exchange of information with Russia, and under the old rules it was impossible to receive dividends to a Cyprus bank account.

Now membership of a particular country in any organization is unimportant; if it participates in the automatic exchange of financial information with our country, there no restrictions for the receipt of income from non-residents to bank accounts in such a country. A

REVIEW OF RUSSIAN LEGISLATIVE CHANGES IN 2020

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As always, the legislator has thoroughly prepared for the 2020 and made sure in advance that both legal practitioners and average citizens had something to do during the long New Year holidays: like study how our life will change with the entry of many changes to regulatory acts of all levels into force.

Following the established tradition, Korpus Prava has prepared a general overview of the most interesting short stories of the Russian legislator that will come out in 2020.

A procedure has been established for resolving disputes concerning the procedure for taxation of entities regarding their income, profit and property when applying provisions of the international taxation agreement of the Russian Federation

From January 01, 2020 the Tax Code of the Russian Federation will be supplemented with chapter 20.3 Mutual Agreement Procedure in Accordance with the International Taxation Agreement of the Russian Federation.

The mutual agreement procedure in accordance with the international taxation agreement of the Russian Federation is the procedure for resolving disputes on the procedure for taxation of entities regarding their income, profit and property when applying provisions of the international taxation agreement of the Russian Federation.

The procedure for conduction of the mutual agreement procedure is determined by provisions of the relevant international taxation agreement of the Russian Federation. The mutual agreement procedure may be initiated at the request of a taxpayer or at the request of a competent authority of a foreign country (territory) being a party to the international taxation agreement of the Russian Federation.

The procedure and deadlines for submitting an application for the mutual agreement procedure as well as procedure and deadlines for consideration of this application are determined by the Ministry of Finance in view of provisions of international taxation agreements of the Russian Federation.

In addition, from 2020 a new article 105.18-1 of the Tax Code of the Russian

Federation Adjustments Based on the Results of the Mutual Agreement Procedure in Accordance with the International Taxation Agreement of the Russian Federation will apply which establishes the following rules:

- For the purposes of applying adjustments based on the results of the mutual agreement procedure in accordance with the international taxation agreement of the Russian Federation, no adjustments shall be made to tax accounting registers and primary accounting documents;
- These adjustments are reflected in the tax returns referred to in subclauses 1 and 2 of clause 4 f article 105.3 of the Tax Code of the Russian Federation — corporate income tax and personal income tax;
- If a Russian taxpayer entity receives the right to offset or refund the amount of tax following the adjustments, the said tax amount shall be subject to offset or refund in the manner established by the Tax Code of the Russian Federation.

From 2020 submission of settlements on advance payments on corporate property tax shall be canceled

It has also been established that in calculation of advance payment on corporate property tax, different cadastral value can be applied which is different from the cadastral value as of January 1 of the year being the relevant tax period.

In addition, it has been established that a taxpayer registered with several tax authorities at the location of their property items in the territory of a constituent entity of the Russian Federation can submit a tax return for all items to a tax authority of their choice. The form of notification about the procedure for submission of tax returns to a tax authority in the territory of a constituent entity of the Russian Federation is established by the Decree of the Federal Tax Service of Russia No. MMB-7-21/311@ dated 19.06.2019.

The deadline for submission of the 6-NDFL (personal income tax) calculation and the 2-NDFL (personal income tax) certificate has been moved from April 1 to March 1 of the year following the expired tax period.

It has also been made possible to submit tax returns on personal income tax in paper form through Multifunctional Centers for Provision of Public Services.

Notice about controlled foreign companies shall be submitted in a new form

The procedure for filling in and submission of the said form has also been updated.

Now, only those notice sheets shall be subject to filling in for which there are grounds for filling them in. The scope of information submitted in respect of a controlled foreign company has been reduced.

The procedure for filling in the notice in the event of its submission by a successor entity and clarified notices for the reorganized entity has been established.

Notices about controlled foreign companies, the obligation to submit which starts from January 1, 2020, shall be submitted in a new form.

The list of income not taxed with personal income tax shall be expanded

Now the following items, among other things, are not subject to taxation with personal income tax:

- Income in cash and in kind received in accordance with the laws in connection with the birth of a child;
- Payment of additional days off provided to parents, guardians and caregivers caring for children with disabilities;
- Compensation of travel of employees living and working in the Far North and equivalent areas and non-working members of their family to the place of vacation and back within the Russian Federation;
- Monetary compensation in lieu of a land plot due from public property determined by federal or regional laws.

At the same time, income in the form of compensation for unused holidays and for unused additional days of rest provided shall not be exempted from taxation.

The minimum tenure of the only accommodation after which payment of personal income tax is not required during its sale shall be reduced from 5 to 3 years

The lack of other accommodation (ownership interest therein) shall be determined as of the date of registration of transfer of the ownership (ownership interest therein) of the sold accommodation. In this case, the accommodation purchased within 90 days before the registration of the transfer of ownership of the sold accommodation shall not be taken into account.

The innovation shall also apply to the land plot on which the accommodation with farm buildings and structures is located.

The law governing relations arising from investing through investment platforms (crowdfunding) comes into force

An investment platform is an information system on the Internet that is used to conclude investment contracts using information technology and technical means. Investments are made by acquiring securities or digital rights or by granting a loan.

Most notably, the law establishes:

- Requirements for the platform operator and the person attracting investments;
- Requirements for the investment platform rules;
- Means and procedure for investment using the investment platform;
- Requirements for disclosure and provision of information by the investment platform operator.

The investment platform operator can provide an individual with a possibility to invest funds in the amount of not more than 600,000 rubles during one calendar year. This restriction does not apply to:

- Individual entrepreneurs;
- Individuals with the qualified investor status;
- Individuals in the event of acquisition of utilitarian digital rights under investment agreements concluded with a public joint-stock company.

The relevant changes have also been made to a number of federal laws.

Entities attracting investments using investment platforms as of January 1, 2020 are required to bring their activities in line with these requirements by July 1, 2020.

An individual who is a bona fide purchaser from whom accommodation has been reclaimed by virtue of a judicial act will be able to receive a one-time compensation at the expense of the budget of the Russian Federation

The compensation shall be paid by virtue of a judicial act that has entered into legal force on the relevant action of the bona fide purchaser against the Russian Federation. The judicial act shall be passed if recovery on the basis of an enforcement document has been carried out partially or not been carried out within 6 months from the date of enforcement of this document for reasons beyond the control of the bona fide purchaser in accordance with the judicial act concerning compensation for losses incurred in connection with reclamation of accom-

modation therefrom that has entered into legal force.

The amount of the compensation shall be determined by court based on cadastral value of the accommodation valid on the date of entry the judicial act on reclamation of the accommodation into force.

If the court determines that the bona fide purchaser has been compensated for losses incurred in connection with reclamation of accommodation therefrom, the amount of the compensation shall be reduced by the amount of the compensated losses.

In the event of payment of the compensation, the right (claim) which the bona fide purchaser has to the person (entity) responsible for causing losses in connection with reclamation of accommodation therefrom shall be transferred to the Russian Federation within the paid amount.

An individual who is a bona fide purchaser from whom accommodation has been reclaimed to the ownership of the Russian Federation, a constituent entity of the Russian Federation or a municipal entity based on a judicial act that has entered into legal force before January 1, 2020 may file a claim against the Russian Federation, the constituent entity of the Russian Federation or the municipal entity concerning payment of a one-time compensation within 3 years (until January 1, 2023).

Claims concerning the compensation submitted by the bona fide purchaser from whom accommodation has been reclaimed by virtue of a judicial act that has entered into legal force before January 1, 2020 are subject to consideration in accordance with the laws in force on the date of submission of the said claims.

The rights of holders to emission securities are now certified with entries in personal accounts in a register maintained by the registrar

In the event of taking account of rights to emission securities in the depository, rights are certified with entries on custody accounts with depositories.

The Federal Law No. 514-ФЗ dated 27.12.2018 also establishes the following aspects:

- Assertion of claims to the issuer concerning early redemption or acquisition of bonds;
- Registration of issues (additional issues) of emission securities by registration agencies;
- Issue of shares during the establishment of a joint-stock company and aspects of bond issue.

In addition, the term ‘depository activities’, rights and obligations of the depositary have been clarified; requirements for contents of decisions to issue emission securities and terms of their placement have been changed; aspects of receipt of dividends in cash on shares as well as income in cash and other cash payments on bonds have been changed.

To take account of rights to emission securities, depositaries and registrars can open escrow agent accounts.

WHAT HAS THE YEAR OF THE RAT PREPARED FOR ACCOUNTANTS?

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For accountants, the year of the Rat under the Chinese calendar starts with studying new accounting rules. Let us consider the main changes that accountants can expect in 2020.

Changes in accounting statements

General changes

One of the main changes is that accounting statements, starting from the statements for 2019, will need to be submitted to a tax authority at the place of registration of the entity as an electronic document only. The same applies to audit report thereon if the accounting statements are subject to mandatory audit.

From January 01, 2020, tax authorities will maintain the State Information Resource of Accounting Statements (GIRBO). The Law No. 247-ФЗ dated 26.07.2019 establishes the procedure for submission of the accounting statements (including amended statements) to the GIRBO.

A copy of the accounting statements will need to be submitted as an electronic document through an operator of the electronic documents flow within not more than three months after the end of the reporting period. In submission of accounting statements subject to mandatory audit, an audit report thereon shall be submitted within the period established earlier.

It will be possible to obtain information from the GIRBO about other companies or individual entrepreneurs on a paid basis. The Government of the Russian Federation has established that from 2020 the annual subscription service for such requests from one workplace will cost 200,000 rubles. The Federal State Statistics Service will continue to provide accounting statements for 2018 and earlier periods for free.

Now all reporting forms should be filled in only in thousand rubles, the measurement unit ‘million rubles’ has been excluded from forms. The name of the line OKVED (Russian National Classifier of Economic Activities) has been replaced with OKVED (Russian National Classifier of Economic Activities) 2.

Changes in accounting balance

The header section of the accounting balance was supplemented with the line specifying whether the accounting statements are subject to mandatory audit or not after the ‘Location’ line. If they are, information about the auditing firm must be specified:

- Name of the auditing firm or full name of an individual auditor;
- INN (Taxpayer Identification Number);
- OGRN (Primary State Registration Number) or OGRNIP (Primary State Registration Number of the Individual Entrepreneur).

The abovementioned changes must be taken into account in submission of accounting statements for 2019.

Changes in statement of financial performance

Changes have also affected statements of financial performance. The reason for this was introduction of amendments to the Russian Accounting Standard (RAS) 18/02 Accounting of Calculations of Corporate Income Tax. The standard determines how certain indicators of the statement of financial performance must be filled in.

The main purpose of the changes is to bring the accounting rules for tax liabilities and related accounting items in line with IFRS.

These changes will become mandatory for use later — from the period of submission of accounting statements for 2020 but an entity may decide to use the changes before the specified period.

Lines related to income tax have been updated in the new form of statement of financial performance:

- Line 2410 has been renamed to Income Tax instead of Current Income Tax;
- Lines 2421 Permanent Tax Liabilities (Assets); 2430 Changes in Deferred Tax Liabilities; 2450 Changes in Deferred Tax Assets have been excluded.

New lines have been introduced (see table below).

Line 2500 Aggregate Financial Result is now determined as the sum of the following lines:

2400 Net Profit (Loss)
+
2510 Surplus on Revaluation
of Non-Current Assets Not Included
in the Net Profit (Loss) for the Period
+
2520 Surplus on other operating activities
not included in the net profit (loss)
for the period
+
2530 Income Tax on Transactions
the Result of Which is Not Included
into Net Profit (Loss) of the Period.

In a simplified statement of financial performance, the line Income Taxes must include current income tax and deferred tax.

Changes affecting the accounting procedure

From 2020, the requirements of the chief accountant concerning correct preparation of primary accounting documents will become mandatory for all employees. The Law on accounting establishes the requirements for maintaining primary accounting documents of an entity. It has been supplemented with a provision that makes it incumbent upon employees of the entity to comply with the requirements of the chief accountant concerning compliance with the established procedure for documenting transactions and submission of documents required for accounting. Such requirements of the chief accountant must be made in writing. If the entity does not have a chief accountant, these provisions shall apply to requirements of another official entrusted with accounting.

Line number and name	Comment
2411 Current Income Tax	Previously — current income tax including permanent tax liabilities (assets)
2412 Deferred Income Tax	Previously — changes in deferred tax liabilities/ changes in deferred tax assets
2530 Income Tax on Transactions the Result of Which is Not Included into Net Profit (Loss) of the Period	Previously absent The indicator contributes to formation of the aggregate financial result of the period

Amendments to RAS 13/2000 Government Assistance Accounting have also been introduced. The rules of government assistance accounting have been brought in line with IFRS. Based on RAS 13/2000, information about government assistance provided from the budget system of Russia is generated. Now the provisions of this standard apply to government assistance provided from state non-budgetary funds. At the same time, the list of cases when RAS 13/2000 is not applied has been expanded.

According to the amendments, public sector organizations must not use RAS. In addition, RAS does not need to be applied, if the economic benefit is related to:

- Public ownership (ownership of municipal entities) of authorized funds of state and municipal unitary enterprises;
- Reimbursement of lost income or financial support (reimbursement) of costs for manufacturing of goods, performance of works, provision of services on a contractual basis.

In general, there are quite a few changes, in addition to staple changes, that we face every year (an increase of the minimum monthly wage in 2020, increase of the maximum base for calculation of insurance premiums in 2020) important changes that transform the work procedure of accountants have also been introduced. Changes in accounting legislation are mainly related to coordination of accounting rules in Russia with IFRS.

Tax changes

Personal income tax

An important amendment regarding personal income tax is that the deadline for submission of reports in the 2-NDFL (personal income tax) form and in the 6-NDFL (personal income tax) form for the year has been moved from April 1 to March 1. Calculation in the 6-NDFL form for 2019 must be submitted on or before March 2, 2020 since March 1 is a day off (Letter of the Federal Tax Service of Russia No. БС-4-11/23242@ dated 15.11.2019).

Employers with 10 or more employees are required to submit reports in the 2-NDFL (personal income tax) and the 6-NDFL (personal income tax) forms in an electronic form only. If the number of employees is less than 10, the reports may be submitted in hard copy.

It will be possible to submit accounting statements on personal income tax on separate subdivisions under new rules: by choosing one Inspectorate of the Federal Tax Service in a municipal entity.

From 2020, entities that have several separate subdivisions in the territory of one municipal entity will be able to submit tax statements on personal income tax and transfer the deducted amount of personal income tax to the budget at the place of registration of the entity itself or one of its separate subdivisions. But for that end, the company will have to submit a notice to the Inspectorate of the Federal Tax Service and specify which subdivision will report. The deadline for submission of the notice is January 1; it will be impossible to change the subdivision during the year.

Transport and land tax

One of the positive changes for entities was that it is no longer required to submit several tax returns. Tax returns on transport and land tax shall not be submitted to tax authorities for 2020 and subsequent tax periods.

As part of the 2019 financial statements, this is the last time the companies submit tax returns on land and income tax. Tax inspectors will calculate the tax independently based on the available information and send the relevant notices to taxpayers.

Such practice has been applied to individuals for many years, and now it will be applied to legal entities as well.

Property tax

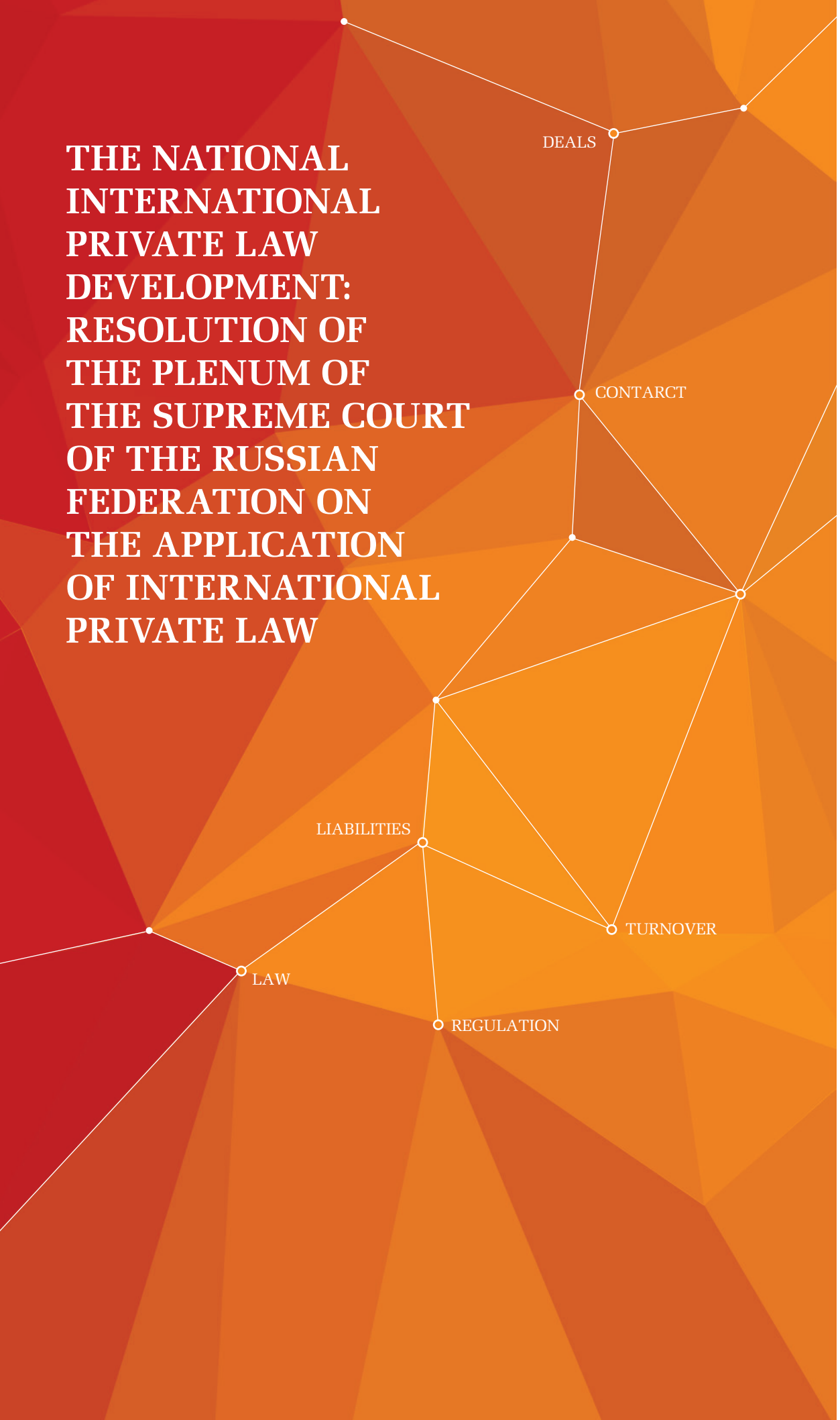
From 2020, it will no longer be required to submit calculations concerning advance payments on corporate property tax. Only the obligation to submit annual tax returns where a section dedicated to information on advance payments will appear.

In accounting statements for the tax period of 2019, a new form of the entity's property tax has been introduced.

In addition, if a company is registered with several Inspectorates of the Federal Tax Service at the place of registration of its immovable property items and determines the tax base thereon as their average annual value, it can submit one tax return on all its items to any Inspectorate of the Federal Tax Service where it is registered at its choice. To report for 2020 centrally, the company needs to file a notice on or before March 2. It is not allowed to change the procedure for submission of the tax return chosen by the taxpayer during the tax period. To report centrally for subsequent years, such notices will need to be submitted annually.

The changes affecting property tax are positive for companies; they will simplify the work of accountants in the upcoming year, especially the work in companies registered with several Inspectorates of the Federal Tax Service.

Not all important changes affecting the work procedure of accountants in 2020 have been considered. It is essential to recall that lawmakers plan to bring the accounting procedures of Russian companies in line with IFRS, and from 2021 the use of certain Federal Accounting Standards will be mandatory. A



THE NATIONAL INTERNATIONAL PRIVATE LAW DEVELOPMENT: RESOLUTION OF THE PLENUM OF THE SUPREME COURT OF THE RUSSIAN FEDERATION ON THE APPLICATION OF INTERNATIONAL PRIVATE LAW

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2019 was full of events in the legislative and enforcement spheres. Novation has affected particularly the scope of international private law: on 9 July 2019 Russian Supreme Court Plenum Resolution for the first time clarified key international private law issues (in international private law enforcement sphere). Despite the fact that this is not a full reform of international private law in Russia, the Resolution which establishes basic principles of international private law appearance may be defined as a practically significant event both for judges who are directly focused on the application of international private law and dispute resolution based on international private law rules (when disputes arises in the field of cross-border civil law circulation, and for business representatives operating on an international sphere).

The Resolution contents are the following general points:

1. General Provisions.
2. The law to be applied in determining the legal status of persons.
3. The Applicable law to property rights.
4. The Applicable law to the form of the transaction.
5. The Applicable law to contractual obligations.
6. The Applicable law to relationships involving consumers.
7. The Applicable law to the relations of voluntary representation.
8. The law applicable to non-contractual obligations.

It seems that the content was determined by some gaps and collisions in enforcement practice, which negatively affected the results of the consideration of cases that should be resolved on the basis of international private law rules. As was mentioned, legal proposition considered by the Plenum of the Supreme Court will be useful not only for arbitral or judicial authority but also become a functional "guidance" for multinational companies' lawyers, legal consultants and advisors in contract drafting and deal structuring when exciting of international element is relevant.

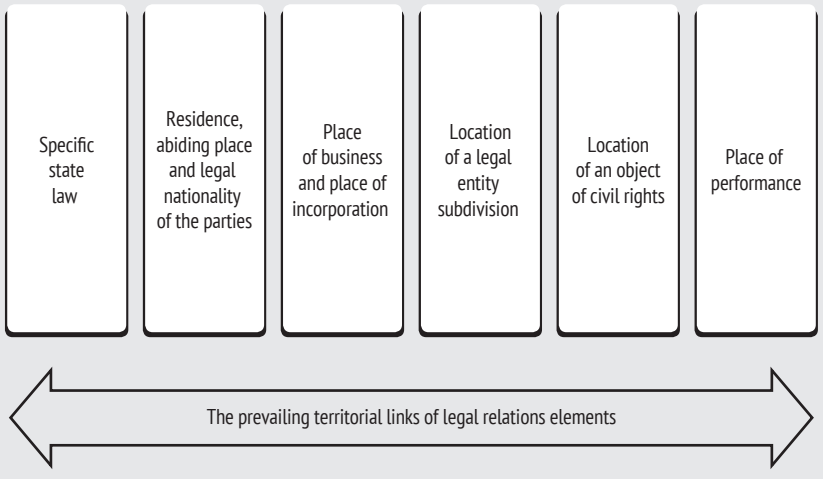
As known, the rules of international private law are applicable if there is a foreign element. The list of foreign elements is given in paragraph 1 of Article 1186 of the Civil Code of the Russian Federation: foreign (economic, private) entity – subject and foreign object. The list mentioned above is not closed, the Plenum in the Resolution gives an exam-

ple of non-defined foreign element: "As a foreign element, inter alia also may be considered the commission of an action abroad or the occurrence of an event (legal fact) that entails the occurrence, change or termination of a civil relationships".

The General Provisions establish, among other things, the "priority" applying of the substantive rules enshrined in international treaties to which the Russian Federation is a party. In other words, Applicable law is not determined on the basis of conflict of laws rules in the case when the issues are fully resolved by the substantive rules mentioned above. If the legal issue is not resolved in an international treaty, applicable law will be determined on the basis of the conflict of laws rules application that are contained both in domestic state law and in the international treaties and agreements (specifically, the conflict of laws rules enshrined in international legal acts to which Russia is a party will primarily be "a guide" for Russian judges in determining the applicable law). If any international legal sources that determine the applicable law are absent, the court, as before, should apply the criteria of "the closest connection", the main factor in which is the prevailing territorial connection of various "international" elements of legal relations (Scheme #1).

Over and above, special attention in the Resolution is given to the hierarchy issue (of international treaties norms and rules that should be applied to legal disputes relations). In this respect The Plenum mentioned that the court determines the scope of the rules in accordance with Vienna Convention on the Law of Treaties, 1969 (Section 2, Part 3). It stands to mention that special rules enshrined in international treaties have priority over general rules (this general rule does not depend on the dates of adoption of the relevant international treaties and the number of participants, however, as an exception, the rules of such international treaties may establish otherwise). It seems that the mention of hierarchy in the Resolution is caused by the analysis of the erroneous application of the norms of international treaties, and should lead to the minimization or elimination of incorrect selection of the norms that should be applied by the Russian judges in each particular case.

For the first time in Russian practice, special rule has been established for the non-state sources use, the practical importance of which can hardly



Scheme #1. The principle of the closest connection

* The Supreme Court further clarifies that "the court may also take into account the application of the law of which country will best implement the generally recognized principles of civil law and the construction of its individual institutions (non-breaching party protection, proscription of taking an advantage or benefit from misconduct, proscription of abuse of right, weaker party protection, voluntary validity of contract, prohibited unreasonable refusal to perform)".

be overestimated. The parties to the contract in which the foreign element is present can fix the choice of neutral law in the agreement, as well as determine documents containing rules-recommendations for international civil relationship participants. As can be seen from the above, The Plenum of the Supreme Court recognized the right of the parties to choose non-state sources of law same as to choose any applicable national law. The use of such instruments as The UNIDROIT Principles of International Commercial Contracts (UPICC), the Model Rules of European Private Law, The Principles of European Contract Law (PECL) is possible only with the express agreement of the parties. National law (if the parties chose non-state sources of law) will be applied on a subsidiary basis and function as a regulator of issues that remain unaffected by the selected non-state sources.

Continuing lex mercatoria topic (non-state regulation, trade customs, etc.), the Plenum of the Supreme Court details the applying conditions of the Rules for the use of national and international trade terms — Incoterms: if the parties use the specific Incoterms trade terms in the contract without making a reference to the Incoterms Rules directly in the contract, the Incoterms application to relations (as amended on the date of conclusion of the contract) will nevertheless be considered as agreed by the parties (if there is no evidence of the other intention, the burden the evidence of which lies on the parties to the contract). In virtue of the primacy of the Incoterms provisions over dispositive norms of contractual status, special attention should be paid to the analysis of the consequences of Incoterms Rules applying during contract conditions structuring process.

Despite the obvious progress in the development of the "non-state regulation" rules, lex mercatoria, their application cannot be the only and comprehensive relations regulator, and shall in no case dismiss an exception of national law as a subsidiary statute to cross-border relations.

Under current conditions of cross-border civil circulation, constant development of international legal regulation of private law relations, the emergence and active use of international trade customs, transnational codifications, model laws and model contracts, national regulation of international private law relations needs to be adapted to such conditions, improved and, to an extent, interpreted and detailed. The Resolution of the Plenum of the Supreme Court on the application of international private law is the first Resolution in international private law that shows that there are the legislator's and executor's attention to this sphere, the desire to improve the practice of applying the rules of private international law and bring national international private law to a fundamentally new level that meets modern international trends. As noted, the legal positions considered by the Plenum of the Supreme Court represent a functional "guide" designed to draw attention to complex international private law issues in general and to become "a candle-holder" in the correct structuring of cross-border relations and in increasing the level of transparency of the relevant legal consequences.

About the Company

Korpus Prava was established in 2003 in Moscow, Russia. Together with our offices in Russia, Cyprus, Latvia and Hong Kong we offer clients a truly international service. Our highly qualified and friendly staff is available to provide to the clients a flexible, reliable and efficient service.

The mission of the Company is to raise the business value of the client and bring down risks.

Korpus Prava offers services in:

- Legal and tax consulting
- Transformation of financial statements to IFRS
- International tax planning
- Project consulting
- Corporate services
- Capital transactions / M&A
- Tax disputes
- Economic disputes and bankruptcy
- Real estate transactions
- Intellectual property
- Financial Consulting

The company is mentioned in the rankings of the leading international directory “Legal 500” that is completely and comprehensively overtaking the global scope of legal services.

Korpus Prava was nominated as the best legal firm in Russia according to the authoritative magazine “The Lawyer”; it takes one of the leading positions amongst Top 50 legal firms in Cyprus, and it has also been recognised as the best international legal firm for tax planning in Cyprus. Korpus Prava Private Wealth Practice has taken fifth place in Private Banking and Private Wealth sector in Russia, in the category of Succession Planning Advice and Trusts according to the annual rankings of Private Banking Russia Survey 2016 of the prestigious magazine “Euromoney” (as of February, 2016).

Korpus Prava is a member of Cyprus Fiduciary Association (CFA) and Franco-Russian Chamber of Commerce and Industry (CCIFR). It takes part in the development of business community, business presentations and the exchange of professional experience.

Our certified specialists conduct seminars and consultations for accountants and the representatives of company financial services; they act as experts, and they are published in popular financial publications.

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