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New Stage of Reforms of the Civil Code of the Russian Federation: Contractual Law

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Московская государственная юридическая академия

МГЮА

Dear readers,

I am glad to introduce a new issue
of our corporate edition Korpus Prava. Analytics.

The main subject of this issue is the amendments to the Civil Code of the Russian Federation concerning the contractual law. These innovations are considered positively in the professional environment as they are timely in the established law enforcement practice. You will find the most important and interesting changes in our magazine.

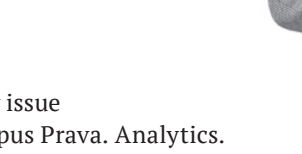
We have continued one of the topics of the previous issue and have touched upon the changes concerning the rules of corporate law again. It has been six months since the new corporate and legal structure of business entities was implemented and, of course, the changes have triggered many questions. We have selected the most significant ones and our Senior Lawyer Olga Kuramshina has answered them and made her recommendations. In this issues, you will be able to familiarize yourself with the status of special economic zones in Russia; we have also touched upon such a parmanent event as a judicial reform in the Russian Federation as well as risks and advantages of life insurance in Russia.

The specialists of Korpus Prava will acquaint you with the advantages of choosing Cyprus as a jurisdiction for registration of intellectual property and how Cyprus fights against money laundering.

As before, we respect criticism and requests from our readers, that is why you are always welcome to send us your questions and suggestions. Please, feel free to contact us in any way convenient for you and we will try to consider all your suggestions.

Have a good read!

Artem Paleev
Managing Partner
Korpus Prava



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AMENDMENTS TO THE SECOND PART OF THE CIVIL CODE OF THE RUSSIAN FEDERATION

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Contractual Law Reform

Quite recently material amendments have been introduced to the Civil Code of the Russian Federation, precisely to its part dedicated to corporate and real rights. However, the section of the first part of the Civil Code of the Russian Federation devoted to the contractual law remained untouched by lawmakers.

Nevertheless, now it is the turn of the contractual law. Thus, right before the international women's day Federal Law No. 42-FZ on the Introduction of Amendments to the First Part of the Civil Law of the Russian Federation dd. 08.03.2015 was drafted and adopted. It came into force on June 1, 2015. Under this law, material amendments were introduced to the binding part of the Civil Code of the Russian Federation. According to many experts, most innovations embodied approaches developed by the Supreme Commercial Court of the Russian Federation (now non-existent) and stipulated by it in resolutions of plenary meetings. Therefore, the scientific community, in the whole, views the adopted innovations favorably because they are long overdue and reflect the existing law enforcement.

Let us consider briefly the most significant and interesting amendments introduced in the Federal Law No. 42-FZ dd. 08.03.2015.

New Types of Contracts

As has been mentioned, the Civil Code of the Russian Federation is supplemented with provisions regulating the possibility of execution of new types of contracts, which have not been mentioned in the civil law before.

Option for the Execution of Contract

By virtue of the agreement for the option for the execution of contract (option to the execution of contract), one party by means of irrevocable offer shall grant the other party the right to execute one or several contracts on terms specified by the option. The option for the execution of contract shall be provided for a fee or other consideration, if not otherwise specified by the contract. The other party shall be entitled to execute the contract by accepting such offer following the procedures, in time and on terms specified by the option. The option for the execution of contract may also stipulate that the acceptance is possible only upon occurrence of terms specified by such option, including terms within the control of one of parties. The option for the execution of contract shall include terms, which allow defining subject and other

material terms of the contract subject to execution. Option for the execution of contract shall be executed in form set forth for the contract subject to execution.

Option Contract

Revised code also includes a separate clause devoted to similar contract – the option contract. Under the option contract, one party shall be entitled to demand the other party to perform actions specified by the option contract within the term set forth by the contract.

However, if the authorized party does not make demand within the said term, the option contract shall be terminated.

The party shall pay the amount of cash set forth by the option contract for the right to make demand under such contract, except cases, when its gratuitousness is stipulated by the option contract. Upon termination of the option contract, "payment for the option" is not subject to return, if not otherwise specified by the option contract.

In essence, both types of contract (option for the execution of contract and option contract) have little or no difference: in both cases there is an authorized party, which unilaterally acquires the right to demand the liable party to perform a certain action; also, in both cases there are provisions for consideration for the option (if parties have not expressly agreed upon its gratuitousness).

The slight difference lies in the form of execution of such contracts: the option contract by itself constitutes an independent type of contracts, whereas the option for the execution of contract may be executed as an independent (separate) contract or integrated into the text of other contract. Also, the specified types of contracts differ in the moment of execution (entry into force) of such contracts: the option contract generally comes into force upon its signing, and the option for the execution of contract (being an offer) comes into force after its acceptance by the authorized party.

It appears that in the future the said types of contracts will be widely used for structuring capital transactions. However, as it is known, agreement of sale and purchase of the share in the authorized capital is subject to notary certification, and option contract should be executed in form specified for the contract subject to execution. Moreover, application on the introduction of amendments to the information on Company Members in the Unified State Register of Legal Entities (USRLE) shall be signed by the seller, not the buyer. Thus, at this stage it is still unclear, under which terms notaries will certify such contract, and also under which terms the authorized party will be able without legal proceedings to hold sellers of the share liable to sign relevant applications on the introduction of amendments to the USRLE. However, answers to these questions will be probably found in the course of ongoing practice, and there will be no obstacles left for practical implementation of such institutions.

Subscriber's agreement

Another new type of agreement is the agreement executed on demand (or subscriber's agreement). The agreement shall be recognized as the subscriber's agreement, if it stipulates certain, including regular, payments or other considerations made by one of the parties (subscriber) for the right to demand the other party (contractor) perform certain actions specified by the agreement in the requested amount or volume or on other terms set forth by the subscriber. However, generally the subscriber should make payments or perform other actions under the subscriber's agreement regardless whether such performance has been demanded by the contract, if not otherwise stipulated by law or the agreement.

New Contractual Institutions

Property Damages

In addition to existing compensation institution (Clause 15 of the Civil Code of the Russian Federation), the revised code stipulates property damages institution. The main difference of this instrument from the compensation lies in the fact that property damages are not related to the breach of obligation by the compensating party (for example, damages may result from impossibility to perform obligation, claims of third parties or state authorities against the party or the third party specified in the agreement and etc.).

Generally, the amount of property damages may not be reduced by court (except cases when the party intentionally facilitates increase of damages). Moreover, damages shall be reimbursed regardless whether the agreement is declared unconcluded or invalid. If damages result from unlawful actions of the third party, claim for damages against such third party shall pass to the party, which reimburses such damages.

It is also stipulated that this instrument may be applied only in relations between entrepreneurs (with exceptions specified for corporate contracts or agreements for alienation of shares or interests in the authorized capital of the business company, which may be executed by an individual not involved in entrepreneurship).

Property damages institution vaguely resembles indemnity in the English law. It is seen that it will be quite in demand in the context of deal structuring because previously absence in such cases of contract breach by the compensating party was the main obstacle.

Representations on Circumstances

The essence of this instrument lies in the obligation of the party, which made invalid representations on circumstances material for execution, performance or termination of contract, to reimburse to the other party losses incurred by invalidity of such representations or to pay the penalty specified by the contract. Representations on circumstances may also be made in relation to the subject of the contract, authority for its execution, compliance of the contract with the applicable law, availability of required licenses and permits, financial standing of the party or the third party.

Similar to property damages, if the contract is declared unconcluded or invalid, it shall not prevent the occurrence of consequences, occurring due to invalidity of such representations. The application area of this institution is also similar: it is applied strictly in relations between business entities (except cases when individuals execute corporate contracts and agreements for alienation of shares/interests in the authorized capital).

The party relying on invalid representations of the other party being essential for it, together with damage or recovery claims shall also be entitled to withdraw from the contract, and if the party executed the contract under the influence of deceit or material misperception incurred by invalid representations of the other party, then instead of withdrawal from the contract it shall be entitled to invalidate the contract.

In the English law there is also a similar version of this institution called warranties.

Unfair Conduct of Negotiations

The procedure of conduct of pre-contractual negotiations (negotiations on the execution of contract) has been institutionalized in the Russian law for the first time.

Generally each party shall solely bear all expenses related to the need to conduct such negotiations and shall bear no liability for the fact that no contract is executed as a result of such negotiations. During the conduct of negotiations on the execution of contract, each party shall act in good faith (in particular, refrain from entering or continuing negotiations if it is known there is no intention to execute the contract). More specifically unfair conduct of negotiations means provision of incomplete or invalid information or non-disclosure of circumstances, under which the other party could not reasonably expect it. The main consequence of unfair conduct of negotiations is the obligation to reimburse damages, which include expenses

incurred by the other party due to the conduct of negotiations on the execution of contract, and also due to the loss of possibility to execute the contract with the third party.

The parties may agree upon details for the conduct of negotiations, specify penalty, but may not limit liability for unfair actions.

Fulfillment of Obligations

Agreement between creditors

The revised code stipulates that creditors of one debtor under similar obligations may execute agreement for the procedure for the discharge of their claims, including those regarding the priority and adequacy of their discharge. The parties of such agreement shall not perform actions aimed at the receipt of discharge from the debtor in breach of agreement terms.

Discharge received from the debtor by one of the creditors in breach of agreement terms is subject to transfer to the creditor under other obligation in accordance with the agreement terms. The claim of the creditor, which received discharge by transfer from the other creditor, who received such discharge from the debtor, shall be transferred to the debtor in the respective part.

Agreement between creditors regarding procedures for the discharge of their claims against the debtor is not binding for the parties, which are not parties to such agreement, including the debtor.

Discharge of obligations to the applicable party

In accordance to revised Clause 312 of the Civil Code of the Russian Federation, the debtor shall be entitled not to fulfill obligations to the party acting under the document executed under hand prior the approval of its powers by the principal. Except the following cases: the representative acts under the power of attorney certified by notary, there is written authorization given to the debtor by the creditor, and also if the power is stipulated in the agreement between the creditor and the debtor.

Interest on cash obligation

If not otherwise stipulated, in relations with commercial organizations the creditor shall be entitled to receive from the debtor interest in the amount of debt for the period of use of monetary funds. Unlike interest specified in Clause 395 of the Civil Code of the Russian Federation, right for interest is not related to unlawful withholding of monetary funds. By default, the amount of interest is defined according to the amount of Central Bank rate effective during the applicable periods (legal interest). Accrual of interest on the interest is insignificant, except obligations under bank deposit agreement and contracts related to entrepreneurial activity performed by its parties.

Reciprocal Performance of Obligations

To this extent, amendments has been introduced to Clause 328 of the Civil Code of the Russian Federation, in accordance whereto it was specified that the party under obligation providing for reciprocal performance, shall not be entitled to seek performance in court without fulfilling its owed obligation to the other party.

Conditional Performance of Obligation

It is expressly stipulated that the term for the performance of obligation may be calculated from the moment of performance of obligations by the other party or from the occurrence of other circumstances set forth in the law or other contract. Performance of obligations, and also exercise, amendment or termination of rights may be conditioned upon performance or non-performance by the party of certain actions or occurrence of circumstances specified by the contract, including those within control of one of the parties. Specified amendments should allow structuring conditional obligations without risk of their contest as transactions performed on term fully within control of one of the parties, and also on the ground that the term for the performance of obligation does not comply with the evidences of inevitability of its occurrence.

Securing Performance of Obligations

Consequences of the Main Obligation Invalidity

In accordance with new regulations it was specified that if the contract, where the main obligation was stipulated, is invalid, liability for the return of property received under the main obligation and related to the consequences of such invalidity shall be deemed secured.

Reduction of Penalty

It is specified that upon charge of contract penalty from the party performing entrepreneurial activity the penalty may be reduced only (1) under the debtor's application and (2) if it appears that charge of penalty in full may lead to the receipt by the creditor of unreasonable profit.

Surety

This section has been materially revised, in particular, the revised code includes explanations of the Supreme Commercial Court of the Russian Federation set forth in Resolution of the Plenary Meeting No. 42 dd. 12.07.2012 dedicated to surety:

- parties performing entrepreneurial activity can now provide general surety securing all existent and/or future obligations of the debtor to the creditor within certain amount;
- if security of the main obligation effective as of the moment the surety occurred is lost (or terms of security deteriorated) due to circumstances within the creditor's control, the surety shall be released of liability to the extent, to which he/she could seek reimbursement by means of lost security, if it appears that he/she is entitled to reasonably rely on it. Agreement with the surety being the citizen stating otherwise is not allowed;
- the surety is entitled to withhold performance of its obligation until the creditor has opportunity to obtain satisfaction by means of set-off;
- it's expressly stipulated that death or liquidation of the debtor does not terminate surety obligations;
- the surety, which acquired rights for securing the main obligation (for example, co-pledgor), shall not be entitled to perform them in prejudice of the creditor, in particular, shall not be entitled to exercise them prior complete discharge of the creditor's claims under the main obligation.

Independent Warranty

A new way of securing performance of obligations specified by law appeared: this is granting of independent warranty. This way of securing performance of obligations replaces such way as bank warranty. Unlike the latter, independent warranty may be issued not only by banks, but also by any other commercial organizations.

Deposit

It now expressly stipulated that deposit may secure performance of obligation for the execution of the principal agreement.

Security Payment

Security payment becomes another new way of securing performance of obligations. Security payment means monetary amount paid by one of the parties to the other party and securing performance of obligations for the recovery of damages or payment of penalty in case of breach of the contract.

Liability and Recovery of Damages

Recovery of Damages

The revised code of the Russian Federation sets forth that the court shall not be entitled to reject claim for damages only on the ground that their amount is not reasonably evidenced. In such case, the

court acting under the principle of justice and proportionality shall define the amount of damages by itself. The right to claim restraint of violation of negative obligations (obligations to refrain from any actions) has also been defined; such claim may be submitted regardless the claim for damages.

Losses upon Termination of Contract

There are special consequences stipulated in case of early termination of a contract due to its breach by the party in breach. Besides recovery of other losses, the affected party shall be entitled to claim recovery of difference between the costs of the terminated contract and the contract executed instead of it; and if there is no such contract, to claim recovery of difference with the "current cost".

Interest for the Use of Borrowed Monetary Funds

Interest rate for the use of borrowed monetary funds specified by law is subject to amendments: the bank rate is replaced with average bank interest rate on deposits of individuals published by the Bank of Russia and being valid in the applicable periods in the creditor's location/place of residence.

Amendment, Termination, Invalidity of the Contract

Invalidity of the Contract

There has been a general rule defined for invalidation of deals. Thus, in the area of entrepreneurial activity the party, which accepts performance under the contract from the counterparty and with that does not fulfill its obligation fully or partially, shall not be entitled to claim invalidation of contract, except on the grounds specified in Clause 173 of the Civil Code of the Russian Federation (deal contravening aims of a legal entity), Clause 178 of the Civil Code of the Russian Federation (deal executed under the influence of a material misperception), Clause 179 of the Civil Code of the Russian Federation (deal executed under the influence of deceit, constraint, threat or adverse circumstances) or if failure to make reciprocal performance is related to unfair actions of the respondent.

Termination of a Multilateral Contract by Mutual Consent of the Majority of Parties

Under the multilateral contract related to the performance of entrepreneurial activity by all its parties the parties may determine that amendment or termination of contract is possible whether my mutual consent of all or the majority of parties to such contract.

Unilateral Repudiation of Contract

It is stipulated that the party entitled to repudiate the contract shall act reasonably while performing it. If there are grounds for repudiation, but the party: confirms force of the contract, including by means of accepting performance under it; or (only for entrepreneurial relations) waives the right or does not declare exercise of such right in time, the following repudiation on the same grounds shall not be allowed.

RELEVANT ISSUES OF LEGAL STATUS OF BUSINESS ORGANIZATIONS IN THE TRANSITION PERIOD

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As we have written in 1.2015 edition of "Korpus Prava. Analytics", in September 2014 radical amendments were introduced to the Russian civil law concerning, first of all, corporate law provisions. The lawmaker has significantly revised structure of types of legal entities operating in the Russian Federation, and introduced new terms previously unfamiliar to the Civil Code[1].

The system of business organizations valid until September 1, 2014 is described in the scheme below[2] (Fig. 1).

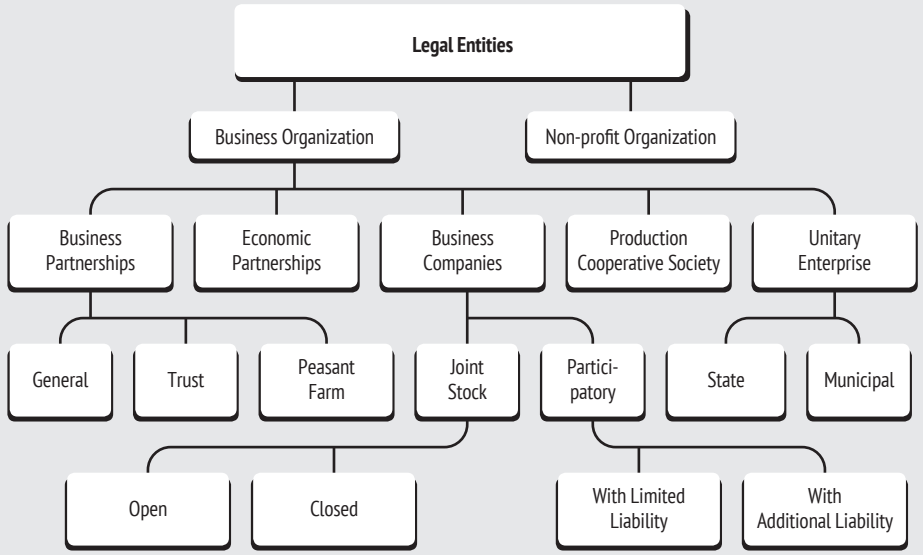


Fig. 1.

1. On September 1, 2014 Federal Law No. 99-FZ On the Introduction of Amendments to Chapter 4 of Part One of the Civil Code of the Russian Federation, and on the Recognition of Certain Provisions of Laws of the Russian Federation as Void, dd. 05.05.2014 came into force.
2. Whereas issues related to the legal status of non-profit organizations are not referred to in this article, in this scheme their structure is not provided.

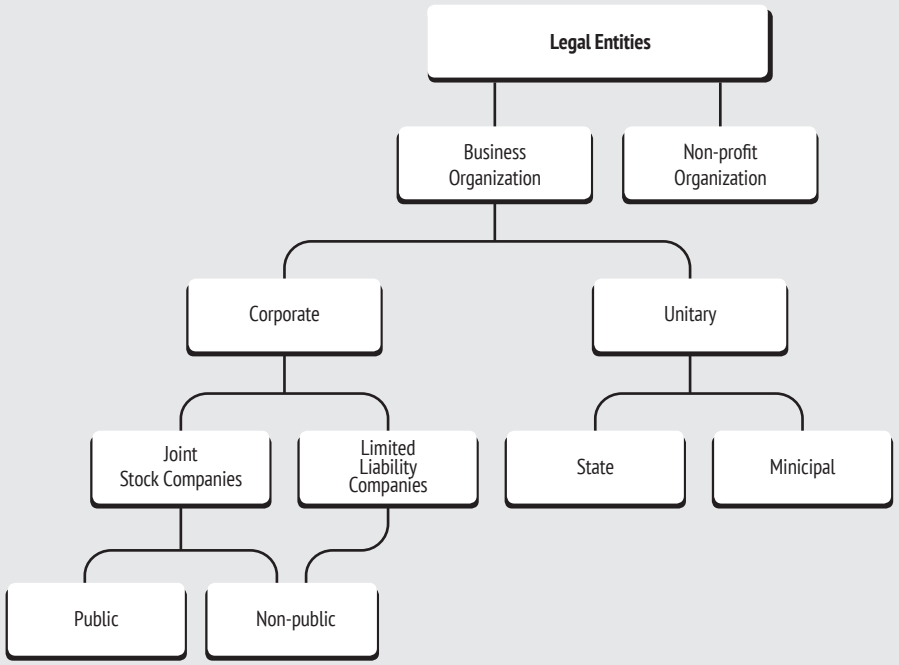


Fig. 2.

In comparison with it, the new structure valid from September 1, 2014 did not become less complex, but anyway has significantly changed (Fig. 2).

"CORPORATE BUSINESS ORGANIZATIONS" IS A TERM, WHICH IN FACT UNITED TWO COMMON TYPES OF BUSINESS: JOINT STOCK COMPANY AND LIMITED LIABILITY COMPANY

"Corporate business organizations" is a term, which in fact united two common types of business: joint stock company and limited liability company. This cumulative definition and selection among joint stock companies of public and non-public companies is derived by the Russian law from its European equivalents.

In fact, introduction of additional (and maybe this particular breakdown is now the primary) breakdown of organizations in public and non-public became the main amendment related to the system of business organizations in Russia. Though this breakdown is valid not only in relation to business organizations, in this article we will dwell precisely on them.

It is notable that all corporate business organizations, both joint stock and participatory, are broken down in public and non-public. That's why the following scheme will be as true as the previous (Fig. 3).

The reader for sure understands that all the foregoing is within the scope of theoretical civil law and is quite loosely related to practical corporate law, which business operating on the Russian market faces.

The first six months of new legal corporate structure of business organizations revealed a number of issues, which arise in the process of business activity. We have collected the most relevant, in our opinion, of them in order to make a kind of FAQ on actions required (or on the contrary, not required) in relation to various corporate units.

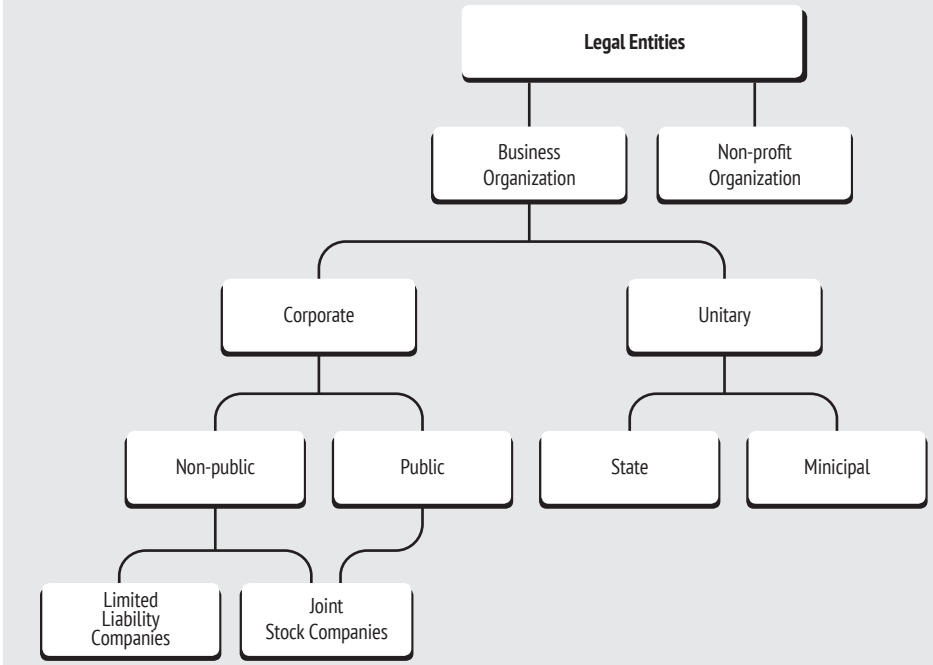


Fig. 3.

Our organization is LLC. Did anything change for us?

No, introduced amendments has not affected legal entities established as limited liability companies. However, some business owners decided not to rely on their luck and referred to our experts with this question, and as in 2009, were ready to attack the registering body armed with revised articles of association[3].

We work through organization established as additional liability company. Can we continue using it or are we required to establish a new legal entity?

A quite exotic situation, but sometimes it happens.

Such type of business as additional liability companies[4] was included in the Civil Code so that participants of corporate relations had an opportunity to specify in articles of association of such legal entities proportionate (multiple) liability of incorporators (members) to creditors in the amount exceeding the size of the authorized capital. It was believed that such type of business will take intermediate position between LLC and private entrepreneurs.

BY WAY OF NATURAL SELECTION, ADDITIONAL LIABILITY COMPANIES DID NOT SURVIVE

3. As many of those who operated prior 2009 remember, the lawmaker introduced quite strict re-registration terms for LLC, and there were enormous queues in registering bodies around the country.
4. Clause 95 of the Civil Code of the Russian Federation (as revised and valid until 01.09.2014).

Their bigger asset security and opportunity for members to define limits of their personal liability to creditors were declared as the main goals of additional liability companies. In theory, it was considered that this type of business will increase attractiveness of organization for counterparties and will release its members of excessive liability.

If fact all advantages appeared to be only fiction, and registered additional liability companies were so few that it was useless to keep this type in law. By way of natural selection, additional liability companies did not survive. From September 1, 2014 provisions on limited liability companies apply to organizations operating within such type of business[5].

Prior introduction of amendments to the Civil Code, our company was open joint stock company. Did we now become public or non-public joint stock company?

Break down of joint stock companies in public and non-public is not directly related to the fact whether they previously were open or closed companies. The grounds for such break down lie in the existence or absence of public offering (public trading) of securities issued by such companies. The law qualifies all joint stock companies, which shares (other equity-linked securities) are offered by way of public subscription or are publicly traded on terms specified in the law on securities as public companies[6].

As lawmakers themselves state, it was deemed that quite small number of joint stock companies will be public, and this category will include large companies. However, it appeared that features of public joint stock companies may be interpreted quite broadly.

The Bank of Russia has dispelled some doubts. Thus, if shares of a joint stock company were placed by way of public subscription, but then redeemed prior September 1, 2014, then as of the date amendments introduced to the Civil Code come to force, the Bank shall recognize such joint stock company as non-public. Also, the Bank of Russia excluded from the group of public features of a joint stock company the existence of prospectus of securities issue. In other words, if a prospectus of securities issue was registered, but the issue was not carried out due to any reasons, the society did not become public[7].

The most serious doubts are related to public trading of securities. The law on securities includes in it regulated trading, and also offering to an unlimited number of people, also using advertising[8]. However, upon placing advertising of securities owned by him/her, a prospective seller does not have an obligation to notify the issuer on his/her actions. Thus, the issuer (in our case, a joint stock company) cannot find out whether advertising in relation of issued securities was placed, and accordingly, whether it became public. Moreover, in theory on these grounds even a closed joint stock company may become public.

Prior September 1, 2014 our organization was a closed joint stock company. Do we have to re-register?

Unfortunately, the lawmaker also did not make itself clear on this issue leaving it for dispute among lawyers.

The law stipulates a closed list of companies, which are not subject to re-registration. This list includes abolished types of business (for example, additional liability companies we have already discussed), and also closed joint stock companies[9]. In relation to open joint stock companies only the principle of break down in public and non-public was determined, but the existence or absence of requirement for re-registration is not stipulated in the law.

The lawmaker left another evidence, which, obviously, should make an attentive reader suggest the right decision: joint stock companies, which comply with public features, shall be recognized as such regardless whether it is specified in their company name[10]. But it also didn't help.

Thus, we have two prerequisites, which may independently from each other lead to controversial conclusions:

1. On the basis of disposition principle, the corner stone of the civil law, if the law does not specifically stipulate obligations of participants of legal relations, such obligations are absent.
2. The law specified only one case when an open joint stock company doesn't need to re-register: the situation when the company complies with public features.

THE LAW STIPULATES A CLOSED LIST OF COMPANIES, WHICH ARE NOT SUBJECT TO RE-REGISTRATION. THIS LIST INCLUDES ABOLISHED TYPES OF BUSINESS AND ALSO CLOSED JOINT STOCK COMPANIES

Relying on such provisions, the following assumptions, which, probably, will further prove to be regulatory enforcement, can be made:

1. If an open joint stock company complies with public features, its re-registration is not required.
2. If taking into the account revised provisions of the Civil Code, an open joint stock company should be recognized as non-public, it requires re-registration. But as the lawmaker didn't define time limits and terms for such re-registration, non-compliance with this term cannot be deemed an offense and does not imply liability.

Against all odds, you will be required to introduce amendments to the name of a legal entity and define whether it is public or non-public upon registration of first amendments in its articles of association[11].

We have changed the name of our company by including words "public joint stock company" in int. Now we understand that according to the law the company should be recognized as non-public company.

In such case, you will have to follow the rules specified for public companies[12]. In general, if you doubt your type of business, it is better to request written explanations in two bodies: in the Federal Tax Service Directorate of the subject of the Russian Federation where the organization is registered and in the Bank of Russia. There is no point in recognizing yourself as a public joint stock company, if you don't intend to place securities publicly.

We need to increase the authorized capital of a joint stock company. Thus, we will have to introduce amendments to the articles of association, but we wouldn't want to amend its name. Can we do that? For how long is it possible to extend the moment of introduction of amendments to the company

5. Subparagraph 1 of Paragraph 8 of Clause 3 of Federal Law No. 99-FZ On the Introduction of Amendments to Chapter 4 of Part One of the Civil Code of the Russian Federation, and on the Recognition of Certain Provisions of Laws of the Russian Federation as Void, dd. 05.05.2014.
6. Paragraph 1 of Clause 66.3 of the Civil Code of the Russian Federation.
7. Letter of the Bank of Russia No. 06-52/9527 On the Application of Law of the Russian Federation in relation to Enactment of Revised Civil Code of the Russian Federation dd. 01.12.2014.
8. Clause 2 of Federal Law No. 39-FZ On Securities Market dd. 22.04.1996.
9. Paragraph 10 of Clause 3 of Federal Law No. 99-FZ On the Introduction of Amendments to Chapter 4 of Part One of the Civil Code of the Russian Federation, and on the Recognition of Certain Provisions of Laws of the Russian Federation as Void, dd. 05.05.2014.
10. Paragraph 11 of Clause 3 of Federal Law No. 99-FZ On the Introduction of Amendments to Chapter 4 of Part One of the Civil Code of the Russian Federation, and on the Recognition of Certain Provisions of Laws of the Russian Federation as Void, dd. 05.05.2014.
11. Paragraph 7 of Clause 3 of Federal Law No. 99-FZ On the Introduction of Amendments to Chapter 4 of Part One of the Civil Code of the Russian Federation, and on the Recognition of Certain Provisions of Laws of the Russian Federation as Void, dd. 05.05.2014.
12. Such situation was described by the lawmaker in Paragraph 1 of Clause 66.3 of the Civil Code of the Russian Federation.

name?

Starting from September 1, 2014, constituent documents and names of previously established organizations should be brought into compliance with provisions of Chapter 4 of the Civil Code upon the first amendment of constituent documents of such legal entities.[13] This provision doesn't leave choice to organizations, that's why amendment of the company name is a mandatory procedure, without which no other amendments will be registered.

State registration of amendments introduced to the articles of association of the company due to the increase of the authorized capital shall be made after registration of report on the results of additional issue. The law does not determine the precise time limit for the introduction of such amendments. In other words, after registration of report on the results of additional issue, amendments to the articles of association can be introduced at any time. However, the company shall bear no risks[14].

Nevertheless, delaying state registration implies certain difficulties in operation for other reasons. As it is known, information on the authorized capital of a business organization specified in its constituent documents should be contained in the Unified State Register of Legal Entities[15]. The same law stipulates that in case of non-compliance of information stored in the Register with information maintained by a legal entity, information stored in the Register shall be deemed valid[16]. As a result, both information on the size of the authorized capital, taking into the account issue results, and, accordingly, maintained by the Bank of Russia, and information maintained by the registering body shall be valid. This inconsistency will be revealed upon the first appeal of the company to any authorities, which will imply not only the risk of refusal of such actions, but also certain reputational risks for the company.

We are ready to introduce amendments to the name of a joint stock company, but numerous documents, which we need for our operation, have been obtained specifying the old name. Will we need to obtain again or update such documents? Will we have any problems upon appeal to any state bodies in relation to the amendment of the name?

In order to overcome excessive problems related to re-issuance of documents and refrain from imposing additional obligations on organizations, the law specifically stipulates the following term: "Amendment of the name of a legal entity for bringing it into compliance with provisions of Chapter 4 of the Civil Code [...] does not require introduction of amendments to documents of title and other documents containing its previous name"[17]. The lawmaker supposes that incompliance of the old and the new name of organization should not lead to any difficulties in appeal to registering and other state bodies.

Though the law expressly addresses this issue, we decided to check, if representatives of state bodies are indeed ready for such documents. In this regard, our experts referred to inquiry service of the Russian State Register[18]. To our request on the provision of explanations, representatives of the said service said that they have no common position on this issue[19].

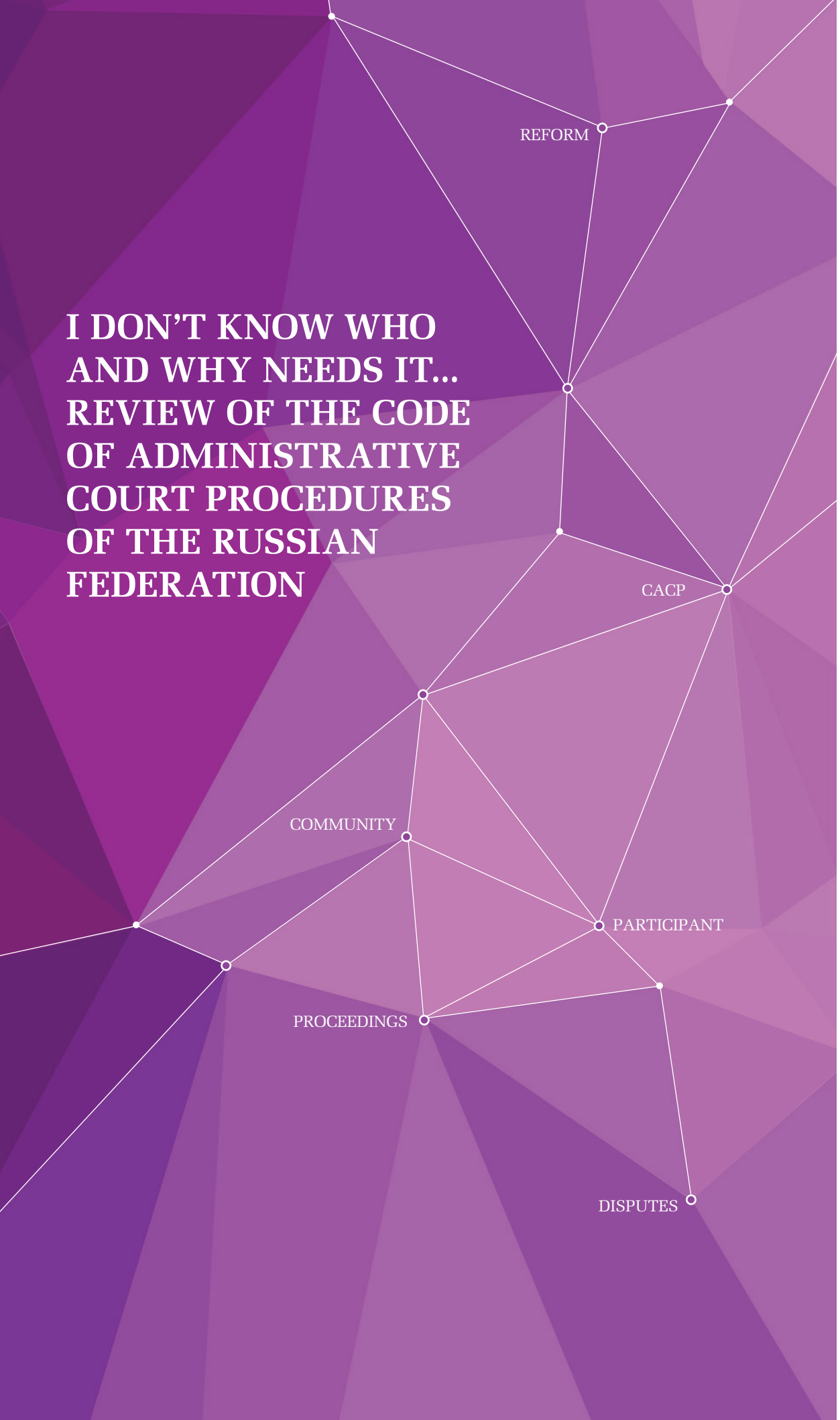
13. Paragraphs 1, 7 of Clause 3 of Federal Law No. 99-FZ On the Introduction of Amendments to Chapter 4 of Part One of the Civil Code of the Russian Federation, and on the Recognition of Certain Provisions of Laws of the Russian Federation as Void, dd. 05.05.2014.
14. Clause 12 of Federal Law No. 208-FZ On Joint Stock Companies dd. 26.12.1995.
15. Subparagraph k of Paragraph 1 of Clause 5 of Federal Law No. 129-FZ On State Registration of Legal Entities and Private Entrepreneurs dd. 08.08.2001.
16. Paragraph 4 of Clause 5 of Federal Law No. 129-FZ On State Registration of Legal Entities and Private Entrepreneurs dd. 08.08.2001.
17. Paragraph 7 of Clause 3 of Federal Law No. 99-FZ On the Introduction of Amendments to Chapter 4 of Part One of the Civil Code of the Russian Federation, and on the Recognition of Certain Provisions of Laws of the Russian Federation as Void, dd. 05.05.2014.
18. The Federal Service for State Registration, Cadastre and Cartography.
19. Final response was received on 18.03.2015, the position might have been determined during the elapsed time.

Thus, in six months after enactment of the law it was revealed that not all state authorities understand how to work with documents of renamed organizations. Maybe, inspectors of the Russian State Register or the Russian Service for Patents and Trademarks will request additional documents or written explanations suspending registration process for this (almost all state authorities have such powers). However, we suppose that none of such state authorities will be able to find grounds for denial in performance of any legally essential actions in respect of such organizations because some kind of delaying of registration can be the biggest trouble here.

Previously, our counterparty was a closed joint stock company, and now it became a non-public joint stock company. How can we transfer rights and obligations under the contract executed between us and the closed joint stock company? Which documents we should request?

First of all, it should be noted that at simple amendment of name no reorganization takes place. It means that counterparty organization did not change, i. e. no additional documents mediating transfer of rights and obligations to non-public joint stock company under the old contract are required.

If we talk about convenience and confirmation of reasonable diligence in choosing a counterparty, it makes sense to request a written notification on the amendment of the name (often such requirement is specified in final provisions of the contract, though usually such notifications are sent as a matter of courtesy). For a new counterparty, it will be relevant to receive a recent extract from the Unified State Register of Legal Entities. As for the rest, relations with such counterparty will remain the same.



I DON'T KNOW WHO AND WHY NEEDS IT... REVIEW OF THE CODE OF ADMINISTRATIVE COURT PROCEDURES OF THE RUSSIAN FEDERATION

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Judicial reform in Russia is a permanent event, it never ends with anything. Those who are at least slightly familiar with the history of Russian court proceedings know that in fact this is a history of judicial reforms smoothly evolving from one into another.

JUDICIAL REFORM IN RUSSIA IS A PERMANENT EVENT, IT NEVER ENDS WITH ANYTHING

From the point of dialectics, this is normal. Social relations do not stay still, they develop and change and judicial system as one of the regulators of social relations has to change with them. But it is a different matter, when reform is made for the reform itself only because such task has been set.

Legislative system is divided into two main "continents": substantive law and procedural law. The substantive law stipulates how the society should act in any given situation, and the procedural law defines what to do when society members do not act as set forth by the substantive law.

Especially in recent years, the substantive law undergoes massive renovation, and mostly it is a necessary and timely process imposed by the very same changes in social relations. The pillars of the substantive law are the Civil Code of the Russian Federation, the Tax Code of the Russian Federation, the Criminal Code of the Russian Federation and the Code of the Russian Federation on Administrative Offenses. Recently, substantive codes, especially the first two, underwent material revisions, and it was reasonably induced. The society develops so rapidly that codes created in the middle of 1990s can no longer govern legal relations effectively. There are events arising, which did not even exist 10-15 years ago. Such revisions of law can only be welcomed.

However, amendments concerning the procedural law are more implied not by economic development laws, but by a certain state policy, and sometimes by redistribution of influence in various spheres of state power. We have seen this evidenced from restructuring of the system of commercial courts.

In the Russian Federation, court procedures may be divided into two categories: criminal court procedures and civil court procedures. Matters of court procedures are subject to applicable procedural

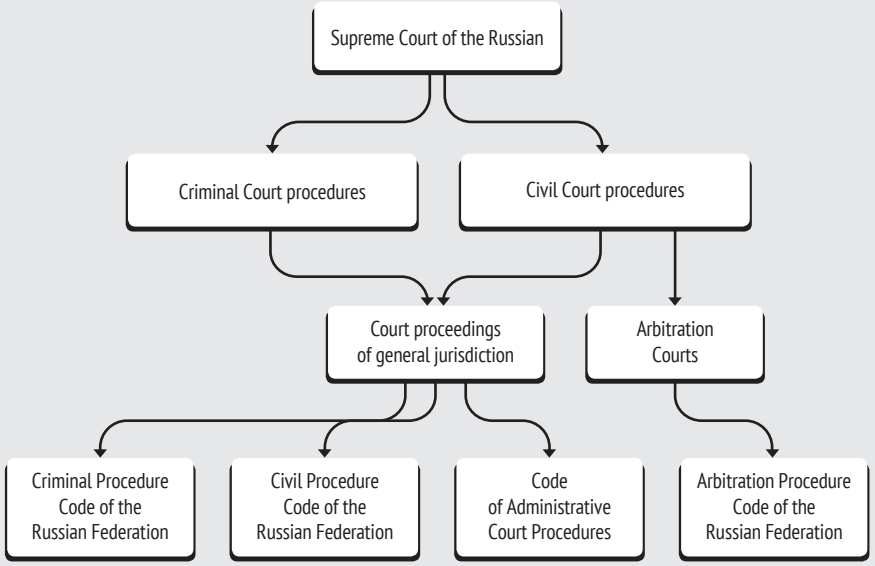


Fig. 1.

codes, which often act as procedural reflection of the substantive code. For example, substantive matters of criminal law are governed by the Criminal Code of the Russian Federation, and procedural matters of the same criminal law are governed by the Criminal Procedure Code of the Russian Federation (Fig. 1).

The structure of civil court procedures is a little more complicated. In civil court procedures, there are two branches: court proceedings of general jurisdiction and arbitration proceedings. Arbitration proceedings deal only with matters of economic disputes and have their own code of procedures for such cases called the Arbitration Procedure Code of the Russian Federation. Proceedings in courts of general jurisdiction are based on the law rules of the Civil Procedure Code of the Russian Federation.

Thus, in the system of court procedures there has long since developed a tradition: each type of court procedure has its own code. But that is not to say that each substantive code has its procedural fellow. Such aphorism does not work for substantive codes. For example, the Tax Code of the Russian Federation does not have the Code for Tax Court Procedures, and also the Labor Code does not have the Code for Procedures on Labor Matters. Procedures for disputes arising in these fields of law are subject to the Civil Procedure Code of the Russian Federation or the Arbitration Procedure Code of the Russian Federation depending on the nature of dispute.

THERE HAS LONG SINCE DEVELOPED A TRADITION: EACH TYPE OF COURT PROCEDURE HAS ITS OWN CODE

Due to such injustice, incentives often arise both within the legal community and within the deputy corps to provide a procedure code for each substantive code, and even to give it a place separate from criminal and civil court procedures.

Idea of creating a separate judicial branch, administrative courts, has existed for a long time, and it has the ground. Indeed, neither courts of general jurisdiction, nor arbitration courts, moreover, are adjusted for effective justice in

respect of administrative cases. And not because these cases are so complex, there is another reason for it. The Civil Code of the Russian Federation constitutes a material basis both for civil court procedures and arbitration court procedures. This is the main instrument specifying priority of liberal theory. Its main principle is the equality of subjects of the civil law. Here, relations of authority and hierarchy are disallowed, and even state institutions acting under the civil law are not vested with power.

Quite otherwise, it is with administrative relations, for which the material basis is the Code of the Russian Federation on Administrative Offenses. Despite civil relations, administrative legal relations may arise not only by choice, but also against the will of participants. This code (the Code of the Russian Federation on Administrative Offenses) is based precisely on relations of subordination of participants of administrative relations to authorities. And if to civil legal relations the principle “whatever is not prohibited is permitted” applies, in respect of administrative relations the principle is directly the opposite: “whatever is not permitted is prohibited”.

Precisely the polar opposition of these principles is the main reason for separation of administrative court procedures as a separate branch.

If it happened so, I, most likely, would have sided with such separation. But it happened otherwise.

In 2014, the bill was brought to the duma, and subsequently Federal Law No. 21-FZ dd. 08.09.2015, which implements the procedure code, the Code of Administrative Court Procedures, was adopted. I don’t know which acronym for this code will take roots, but for now I suggest naming it CACP of the Russian Federation. The new code shall come into force from September 15, 2015.

In the explanatory note to the bill, the legislator defines its motives as follows: “legal definition of a separate type of court procedures (administrative) under the rules of the Procedure Code of the other branch (the Civil Procedure Code and etc.) seems unacceptable”.

However, no one risked going further, and the new judicial branch, i.e. administrative courts, never took form.

Transfer of Cases

It would be a mistake to claim that all court proceedings arising out of administrative legal relations will be governed only by the rules of the CACP of the Russian Federation. As it is set forth in Paragraph 4 of Clause 1 if CACP of the Russian Federation, cases arising out of public legal relations and placed in accordance with the federal law under the jurisdiction of the Constitutional Court of the Russian Federation, constitutional (statutory) courts of subjects of the Russian Federation or arbitration courts are not subject to CACP of the Russian Federation.

CACP OF THE RUSSIAN FEDERATION DID NOT REPEAL OR REPLACE THE CODE OF THE RUSSIAN FEDERATION ON ADMINISTRATIVE OFFENSES

There is a common misconception that CACP of the Russian Federation replaced the Code of the Russian Federation on Administrative Offenses. This is not true, CACP of the Russian Federation did not repeal or replace the Code of the Russian Federation on Administrative Offenses, first of all, because the Code of the Russian Federation on Administrative Offenses is generally a substantive code, which although includes procedural rules, these are rules of extrajudicial administration. And CACP of the Russian Federation is, first of all, a set of court rules.

Moreover, those procedural rules concerning issues of proceedings on cases on administrative offenses, which have been contained in the Code of the Russian Federation on Administrative

Offenses, remained there. Why they were not transferred to the CACP of the Russian Federation, and what the reasoning is here, remains unclear.

That's why the new code should be deemed as one more codified set of court rules, which shall be applied only by courts of general jurisdiction upon the delivery of justice together with already existent Criminal Procedure Code of the Russian Federation and the Civil Procedure Code of the Russian Federation.

First of all, it should be noted in respect of which categories of disputes the CACP of the Russian Federation shall be applied because disputes arising out of administrative legal relations are governed by the Civil Procedure Code of the Russian Federation and the Arbitration Procedure Code of the Russian Federation and the Code of the Russian Federation on Administrative Offenses. We have already said that the new code shall not affect the jurisdiction of arbitration courts. All disputes arising out of administrative relations and in accordance with the Arbitration Procedure Code of the Russian Federation today subject to the jurisdiction of arbitration courts, will be still considered by arbitration courts and under the rules of Section III of the Arbitration Procedure Code of the Russian Federation.

The Civil Procedure Code of the Russian Federation suffered the most because all those categories of cases contained in the Civil Procedure Code of the Russian Federation and titled as cases arising out of public legal relations will be withdrawn from the scope of regulation of the Civil Procedure Code of the Russian Federation and transferred to the CACP of the Russian Federation.

But cases on administrative offenses will remain within the scope of the Code of the Russian Federation on Administrative Offenses. Moreover, proceedings in respect of cases on the levy of execution on budgetary funds will still be governed by the Budget Code of the Russian Federation.

New Rules

According to provisions of the CACP of the Russian Federation, new terms have been introduced: "administrative case" and "administrative complaint", and at that the parties shall be referred to as the "administrative plaintiff" and "administrative defendant". Moreover, citizens of the Russian Federation, foreign citizens, people without citizenship, Russian, foreign and international organizations, non-governmental associations and religious organizations may be qualified as administrative plaintiffs. In certain cases, state authorities, election commissions, referendum commissions and officials may act as administrative plaintiffs.

The CACP of the Russian Federation stipulated option for application of technical achievements. In the course of each court session in original and appellate instances except record-keeping in written audio record-keeping is also maintained. The code also specifies option for the use of electronic documents and systems of videoconferencing, which allow facilitating consideration of an administrative case.

Introduction of cases untypical for consideration in the original instance stirs interest.

Show your diploma!

Interesting innovations of the CACP of the Russian Federation are special provisions on representation. For the first time qualification limitations for judicial representatives, they should have higher education, are introduced not in the criminal code.

If a representative is involved in administrative cases, he/she will have to show to the court diploma of higher legal education.

Upon signature of an administrative complaint by a representative the complaint should be supported by a copy of diploma of higher education.

Individuals, except certain categories of cases, will be able to defend their interests personally.

Heads of organizations upon confirmation of applicable powers are entitled to handle administrative cases on behalf of organizations, including on behalf of state authorities. For heads of state authorities draft CACP also stipulated qualification limitations with regard to higher legal education, however, in final CACP edition this limitation was not preserved.

In light of another idea on the introduction of advocate monopoly for representation in court proceedings, the issue of specifying such limitations for court representatives on administrative cases as advocate status was also discussed during the adoption of the bill, but was not preserved in the final edition. Deputies decided to confine themselves only to qualification limitations.

However, such provision may be regarded as the first step for the introduction of legal monopoly for representation in courts. Moreover, refusal of advocate monopoly suggested by the Supreme Court is a doubtless positive sign. Citizens and legal entities would have appeared in uneven condition, where citizens would have been obliged to use advocate services, and organizations would have had to temporary hire a lawyer.

Judgment Worthy Solomon

The Arbitration Procedure Code of the Russian Federation stipulates the plaintiff's obligation to send to the defendant a copy of complaint and other missing documents and attach to the complaint evidence of such sending.

The Civil Code of the Russian Federation stipulates that delivery of all documents is made directly by court and the plaintiff is only obliged to attach applicable copies for defendant.

The CACP of the Russian Federation made a judgment worthy Solomon: let this matter be resolved by the plaintiff himself/herself, or he/she may send copies of documents to defendant or attach their copies to complaint to be sent by court.

Court Is an Active Participant of Proceedings

One of the main principles and tasks of court proceedings has always been the requirement to secure proper competition and equality of parties.

In the CACP of the Russian Federation, this principle has been materially revised. Moreover, lawmakers did not provide quite reasonable motivation.

As it was said in the explanatory note to the bill, for the purposes of securing proper competition and equality of parties in administrative court procedures the draft underlines the active role of court in case settlement. It is expressed, for example, in the fact that the court is vested with the right to initiate discovery of evidences, and in case of verification of legality of regulations, decisions, actions/omissions "may go outside the bounds of stated claims" (subject of administrative complaint) or grounds and reasons produced by the administrative plaintiff" (Clause 178 of the CACP of the Russian Federation).

It is unclear whether it is related to the attempt to help citizens as non-professional participants in proceedings or to other reasons. But the fact that the third active figure displaces the balance between the parties is alarming.

Disputes over Cadastral Value

This category of disputes became quite popular in recent years. Cases on the contestation of the cadastral value are included into the competence of the CACP of the Russian Federation. Since August 2014, this category of cases was referred to the jurisdiction of courts of general jurisdiction of regions of the Russian Federation. And now such cases are included into the competence of the CACP of the Russian Federation under a separate chapter.

As to the requirements for the set of documents attached to the administrative complaint on contestation of results of determination of cadastral value, provisions of the Law on the Evaluation Activity have been transferred to the CACP of the Russian Federation.

Proceedings under this category of cases were often frozen facing the necessity to determine the market value of real estate object. Due to ambiguity and specific nature of methodology of evaluation, if within proceedings on cadastral cases there are disputes over the use of any evaluation methods, reasonability of use by the evaluator of any analogs of the evaluated object, inevitably arises a question on the relevancy of legal enquiry.

Now in accordance with the CACP of the Russian Federation rules the interested party should submit together with the suit a notary certified copy of documents of title for the real estate object (certificate of ownership, rental contract), and also report on the evaluation of market value and favorable expert opinion of a self-regulated organization on the evaluation report, not only in the form of hard copy, but also as an electronic document.

Simplified Proceedings

The new code stipulated option for consideration of cases following simplified (written) procedures when the court confines itself only to examination of written evidences and considers the case without invocation of parties.

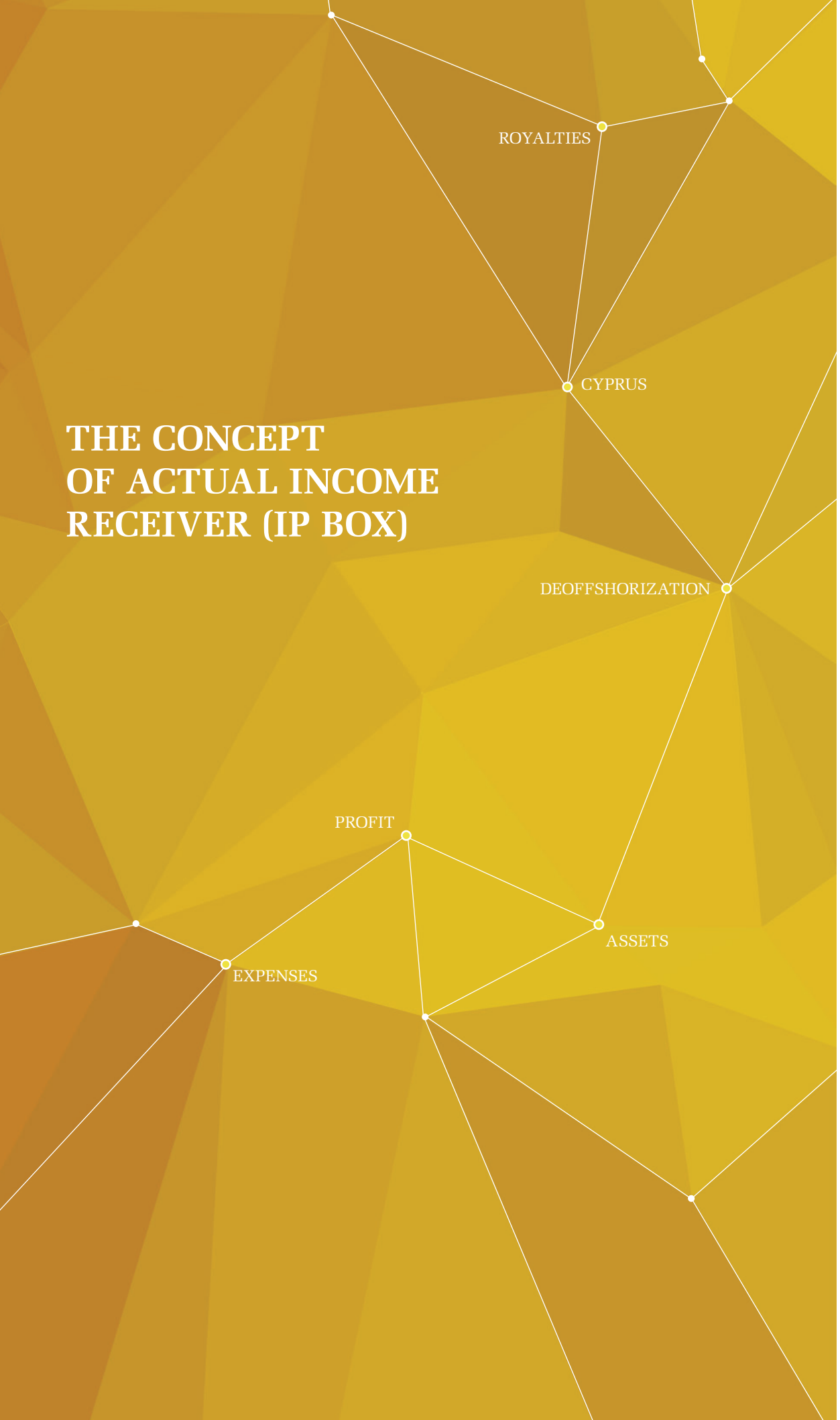
Simplified proceedings are possible upon the application of all participants in the case or if there are no objections from the defendant against application of such procedures (the defendant has 10 days for filing objections) or for cases on the collection of mandatory payments and penalties within 20,000 Rub.

However, the case under simplified proceedings is considered within 10 days from the moment the applicable judgment is issued.

Summarizing the review of the new code, it should be noted that it does not lack attractive moments. For example, used in practice rules of the chapter of the Civil Procedure Code on proceedings on cases arising out of public legal relations were taken into consideration. That's why provisions on the initiation of proceedings on the case, return of application, its suspension or refusal of accepting the application and etc. did not require material revision. Instead of using reference rules, which could be blamed on the Civil Procedure Code of the Russian Federation, it actually repeats general provisions of other procedural laws. The CACP of the Russian Federation stipulates reduction of time for consideration and settlement of administrative cases, including without limitation at cost of material reduction of time for sending judicial documents. All this facilitates creation of effective judicial remedies.

Legal community accepted introduction of the new code ambiguously. Many people saw in it the trend to grant courts wider powers beyond judicial and possibility to use such powers for the benefit of the government, and not the citizen.

I don't think so, but the sense in of separating certain categories of cases into a separate code is also quite unclear to me.



THE CONCEPT OF ACTUAL INCOME RECEIVER (IP BOX)

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IP Box in Cyprus: Old Friends Are Best

Since December 2013, deoffshorization of Russian business has been one of the most popular tax topics. At the beginning of the previous year, the Ministry of Finance published a letter describing prevailing schemes of tax mitigation using advantages stipulated in agreements for double taxation. The Ministry of Finance paid special attention to the fact that in case of application of international agreements in the area of granting right for the use of tax reliefs (decrease of rates and exemptions) for certain types of income from sources in Russia, it should be estimated whether the party seeking tax reliefs (reduced rates and exemptions) specified in the agreement is the actual receiver (beneficiary owner) of the applicable income.

However, for a party to be recognized as the actual income receiver (beneficiary owner) not only legal grounds for the actual receipt of income are required, but this party should also be an actual beneficiary, it means a party, which actually benefits from the received income and determines its following economic benefit. At determining the actual income receiver (beneficiary owner), performed functions and accepted risks of an international organization seeking tax reliefs in accordance with international agreements for the avoidance of double taxation should also be taken into the account.

Tax reliefs (reduced rates and exemptions) in relation to payable income from the source in the Russian Federation are not applicable, if they are paid within transaction or series of transactions performed in such manner that a foreign party seeking tax reliefs as reduced rate on dividends, interest and royalties pays, directly or indirectly, all or almost all income (at any time and in any form) to the other party, which would not have had any tax reliefs (reduced rates and exemptions) under the applicable agreement for the avoidance of double taxation, if such income would have been paid directly to such party.

According to the Ministry of Finance, conduit transactions include without limitation (Fig. 1). Resident of the partner state under the agreement receiving income from copyright from sources in the Russian Federation under the sublicense agreement transfers all or almost all such income to a party, which is the resident of the state without the relevant agreement with the Russian Federation (or the state, with which the agreement stipulates less favorable taxation terms) under license agreement executed between the first

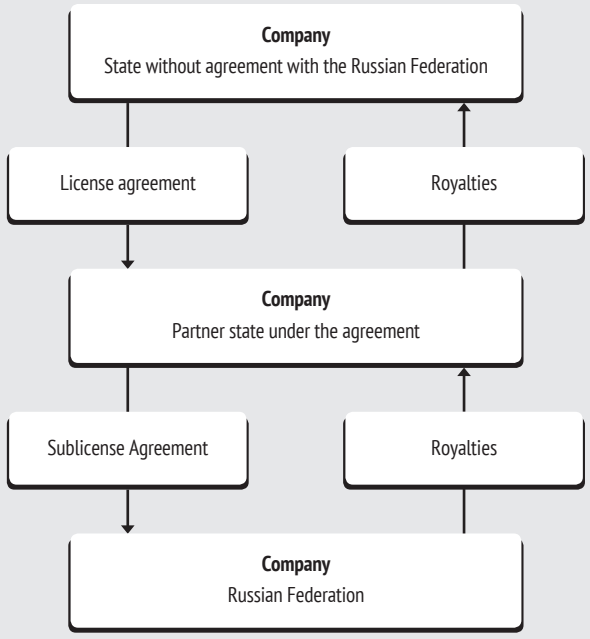


Fig. 1.

mentioned foreign resident and this other resident of the third foreign state being the owner of exclusive rights for intellectual property asset[1].

Thus, the risk of adverse consequences of the use of the abovementioned scheme within the structure of a company has significantly increased.

Such term as real substance is tightly related with the concept of actual income receiver. Among tax lawyers, this term is used in English and sometimes can be found as "priority of contents above form". Generally, in an attempt to get maximum profit from the use of various schemes for tax mitigation most try to save on everything, including maintenance of a conduit company (intermediate company), which is used only for withdrawal of funds to an offshore company with minimum tax liabilities. Such companies rarely have office, staff, archive or assets held.

However, taking into the account recent trends in the national tax law, the Russian business will have to restructure its capital; otherwise, it might face serious consequences and not only penalties.

One of the most obvious solutions is execution of contract directly with the company holding assets, however, at first, it might seem that it is highly impractical because in such case either the right for the use of the agreement for the avoidance of double taxation will be lost, or it will be required to pay tax on profit from royalties at high rate within the jurisdiction, wherewith such agreement is executed. In such situation IP Box regime comes to help. This regime exists in several European countries and it allows significantly reducing the effective profit tax rate in relation to profit gained from rights for intellectual property.

European countries are known for their liberal attitude towards IT area, which is confirmed by application of so-called IP Box regime, which means granting partial exemption of profit tax for income from intellectual property. Such preferential tax treatment is stipulated in the law of the Netherlands, Luxemburg, Cyprus, etc.

1. Letter of the Russian Ministry of Finance No. 03-00-RZ/16236 On the Application of Tax Reliefs Stipulated in International Agreements for the Avoidance of Double Taxation dd. 09.04.2014.

Besides tax advantages of registration of an operation company in the foreign jurisdiction, attention should be paid to the goals of long-term planning. Specified jurisdictions also have preferential treatment in respect of holding structures, at payment and receipt of dividends and royalties. And at reasonable combination of jurisdictions the structure will allow not only optimizing expenses for taxation, but also protecting assets and rights for intellectual property.

The following is the comparative table of application terms for IP Box regime in some countries (see table below).

The foregoing table underlines the distinct advantage of Cyprian IP Box regime, which includes the extensive list of objects of intellectual rights and allows applying the lowest effective rate equal to only 2.5%.

During the last two decades, Cyprus bills itself as the leading jurisdiction in the area of intellectual property after the introduction of favorable tax regime in relation to income received from any type of intellectual property. The new scheme represents an attractive legal and financial basis for the use of objects of intellectual property rights.

IP BOX REGIME, WHICH MEANS GRANTING PARTIAL EXEMPTION OF PROFIT TAX FOR INCOME FROM INTELLECTUAL PROPERTY

Taking into the account the abovementioned, it seems reasonable to look more closely at application terms for IP Box regime in Cyprus.

Cyprus is not the place where the idea of introducing so-called Intellectual Property Box Concept or IP Box was implemented for the first time. It was previously used in some other EU countries: in Belgium, Switzerland, Ireland, Netherlands, Luxembourg and Malta. However, Cyprus has successfully incorporated

	Effective rate	Assets falling within the scope of IP Box	Assets falling out the scope of IP Box	Developed / acquired	Recognized profit	Rate for imputed expenses
Cyprus	2.5%	All (incl. patents, trademarks, know-how, formulas and etc.	No	Applicable to any	All income, incl. compensation for breach of contract save for expenses	80%
Belgium	6.8%	Patents and additional certificates	Know-how, trademarks, design, industrial models, formulas, processes	Independently developed or acquired and improved	Income from patents	80%
France	15%	Patents, patent inventions, and industrial processes	Acquired intellectual rights held for less than 2 years	Applicable to any	Royalties save for expenses for the management of assets	No

	Effective rate	Assets falling within the scope of IP Box	Assets falling out the scope of IP Box	Developed / acquired	Recognized profit	Rate for imputed expenses
Hungary	9.5%	Patents, know-how, trademarks, trade names, copyright	No	Applicable to any	Royalties	50%
Luxemburg	5.76%	Patents, trademarks, design, domain names, copyright for software and useful models	Know-how, formulas, copyright (except software)	Applicable to any (except acquired from interdependent party)	Royalties save for expenses (incl. depreciation, expenses for development, interest on loans and etc.)	80%
Netherlands	5%	Patented proprietary projects	Trademarks, brands, acquired intellectual rights	Only independently developed	Profit from assets	No
Spain	15%	Patents, formulas, processes, plans, industrial models, know-how, design	Trademarks, copyright for literary and art works, scientific works and software	Only independently developed	Income from assets	50%
Great Britain	10%	European patents, additional certificates, rights for plant varieties	Trademarks, copyright and design	Only independently developed and used in business process	Profit from assets	No

their experience. Here, IP Box preferences are applied with maximum flexibility without such disappointing limitations present in other countries as:

- requirement for active participation of employees in the creation of intellectual products;
- limitation of preferences, if intangible assets are created outside jurisdiction;
- limited list of intangible assets falling within the scope of IP Box regime.

The lowest profit tax rate in the EU equal to 12.5% and wide network of current international tax agreements easily secure leadership of Cyprus in competition of jurisdictions applied for the purposes of tax optimization using advantages of the international law.

Cyprian IP-Box regime was introduced in May 2012 and has been applied since January 2012. According to the tax law:

- in accordance with revised Clause 9 (1)(e) of the law On Income Tax, 80% of profit from the use of intangible assets (including royalties, compensation for unlawful use and etc.) and profit from the sale of intangible assets shall be deemed imputed expenses reducing the tax base for income tax on such activity;
- imputed expenses reduce taxable base in addition to other expenses (for R&D, depreciation and etc.). The rest 20% of income received from intangible assets are subject to taxation at standard rate equal to 12.5%;
- profit shall constitute the base for calculation of "imputed expenses" after all direct expenses for acquisition, development and depreciation of such objects of intellectual property are withheld from applicable income;
- this rule applies to all patents, copyright for various intellectual property and trademarks. The law does not stipulate definition or the list of intangible assets governed by new regime. Instead, the law specifies that regime applies to intangible assets as they are defined under the Patent Law, Law On the Rights for Objects of Intellectual Property and Law On Trademarks. These laws govern the following types of objects of intellectual property: trademarks, patents, rights for objects of intellectual property (scientific, literary, musical, art works, cinema, data bases, sound records, transfers, publications). In any case, if there are doubts whether any intangible assets are governed in accordance with new taxation regime, it may be inquired in advance in written at tax authorities of Cyprus through the "system of tax explanations";
- capital expenses for acquisition, creation and development of the object of intellectual property now reduce profit as a result of depreciation of the object of intellectual property in equal shares within 5 years starting from the year when they were produced (it means, annually 20% are allowed for deduction).

Let us consider IP Box regime through the example:

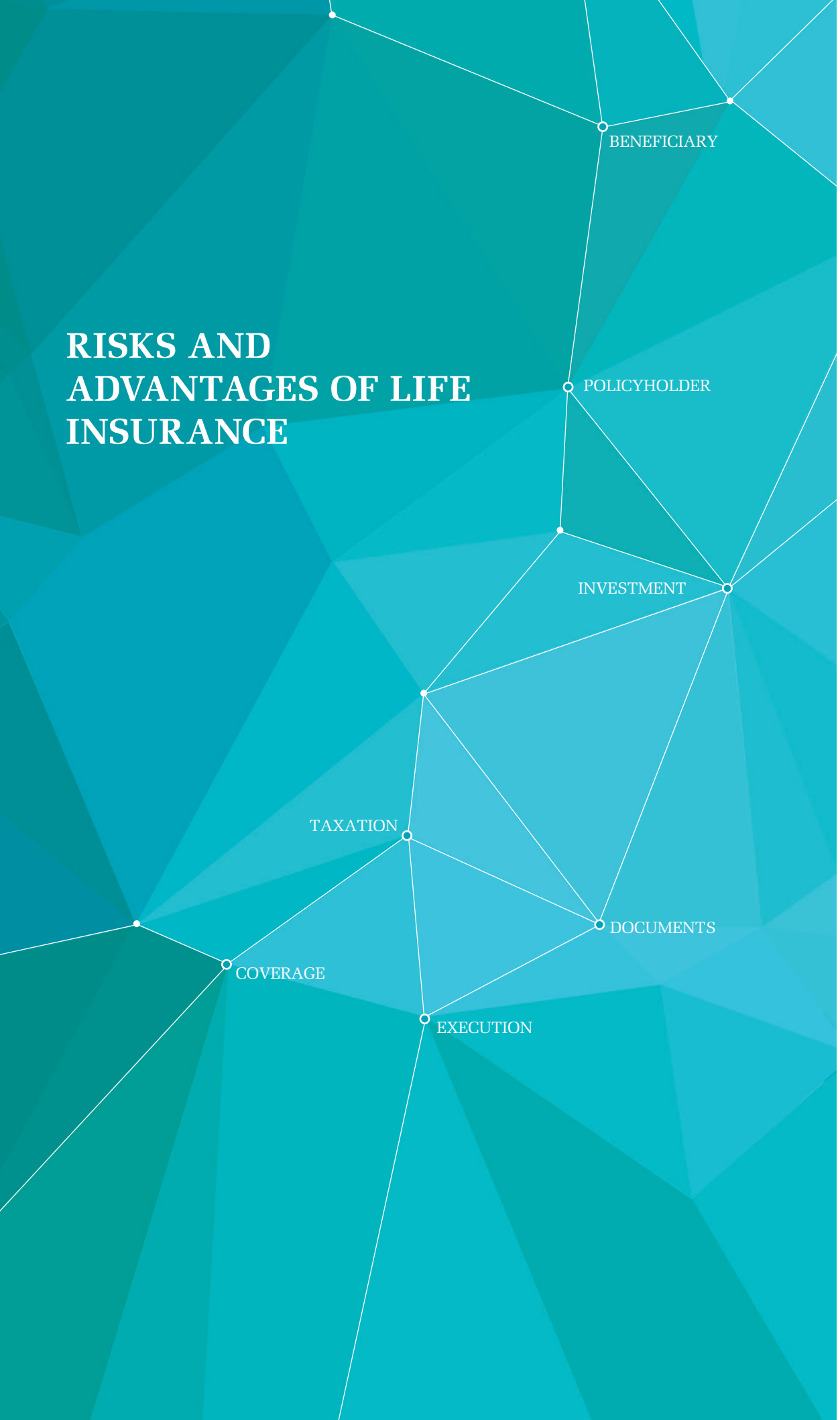
- Expenses for the development of trademark equal 100 000 Euro.
- Royalties annually paid by the Russian company equal 30 000 Euro.
- Annual depreciation (within 5 years) equals: 100 000 Euro/5 years = 20 000 Euro.

Thus:

- Tax base for the first 5 years shall equal: (30 000 - 20 000) - 80% = 2 000 Euro;
- Profit tax shall equal: 2 000 Евро × 12.5 = 250 Euro;
- Tax base for the following years shall equal: 30 000 - 80% = 6 000 Euro;
- Profit tax shall equal: 6 000 Euro × 12.5 = 750 Euro.

Taking into the account the foregoing and data of the comparative table, the decision of Cyprus to introduce the special taxation regime in respect of objects of intellectual property proved to be quite modern. Reduction of the effective income tax rate for transactions with various intangible assets to 2.5% has to improve attraction of Cyprus for foreign investors holding objects of intellectual property.

In addition to abovementioned advantages, there are also other advantages of this jurisdiction, which make it an ideal place for registration of objects of intellectual property. These advantages include: high level of professional services, executed agreements for the avoidance of double taxation (for example, double taxation with Russia: 0% tax rate on royalties charged at source in the Russian Federation) and geographical location. A



RISKS AND ADVANTAGES OF LIFE INSURANCE

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Korpus Prava Private Wealth

Life Insurance — Care for Your Loved Ones

The basis of life insurance began its formation in 1663 when English entrepreneur James Dodson collected all data on different London cemeteries, calculated the average age of deceased, their number per year and applied this statistics for calculation of insurance premium.

Since then insurance industry in Europe developed and blossomed. In 1994, the Single European Insurance Market has evolved, it unites 29 European countries: Austria, Belgium, the Great Britain, Hungary, Greece, Denmark, Ireland, Iceland, Spain, Italy, Cyprus, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Turkey, Finland, Germany, France, the Czech Republic, Switzerland, Sweden, Estonia. Though insurance legislation in all countries has number of differences, it is based on the same principles, such as freedom to provide services and operation to the benefit of insured parties.

Life Insurance in Russia

Unlike Europe, life insurance in Russia has emerged quite recently, however, during formation of principles of insurance law experience and practice of European countries have been taken into the account and applied.

Life insurance is a set of actions of cooperation between the client (insured party) and the insurance company (insurer) aimed at financial and sometimes other security of life and health of an insured party or beneficiary in case of death of an insured party.

Life insurance is a set of actions of cooperation between the client (insured party) and the insurance company (insurer).

LIFE INSURANCE IS A SET OF ACTIONS OF COOPERATION BETWEEN THE CLIENT (INSURED PARTY) AND THE INSURANCE COMPANY (INSURER)

Among types of personal insurance life insurance stands out for the list of actions (insured perils) included into the insurance cover of the insurer and being the basis for insurance benefit, and also for the term of contract. Most types of life insurance are long-term.

Life insurance may be classified according to the following types and criteria:

Main Criteria	Types of Life Insurance Contracts
According to Life Insurance Object	Contracts relating to one's life when the insured party and the policyholder are the same party
	Contracts relating to the life of the other party when the insured party and the policyholder are different parties
	Contracts for joint life insurance on the basis of the first or second death principle
According to Subject Matter of Life Insurance	Death insurance
	Survival insurance
According to the Procedures for the Payment of Insurance Premiums	Single-premium insurance contracts
	Regular-premium insurance contracts
According to the Term of Insurance Cover	Whole life insurance
	Limited payment life insurance
According to the Form of Insurance Cover	Insurance with fixed coverage
	Insurance with decreasing coverage
	Insurance with increasing coverage
	Increase of coverage in accordance with the growth of retail price index
	Increase of coverage due to the share in the insurer's profit
	Increase of coverage due to direct investment of insurance premiums into special investment funds
According to the Type of Insurance Benefits	Life insurance with single payment of coverage
	Life insurance with annuity payment
	Life insurance with pension payment
According to the Means of Execution	Personal
	Joint

Life insurance embodies all those types of personal insurance where insurance coverage is assigned to the death of the insured party or his/her survival up to the certain moment of time.

Life insurance is executed as a contract, whereunder one of the parties, the insurer, undertakes liability to pay the specified insurance coverage, if within the term of insurance, the specified insured event takes place in the life of an insured party, provided he/she receives insurance premiums payable by the insurer. Life insurance contract is related to the life of a certain person, the insured party, thus, the insured party should be defined in the contract, so that it would be possible to estimate the probability of his/her death within the term of the contract.

BENEFICIARY IS AN INDIVIDUAL OR LEGAL ENTITY, TO WHICH BENEFIT THE POLICYHOLDER EXECUTED LIFE INSURANCE CONTRACT

There are personal life insurance contracts when the insured party and the policyholder constitute the same party, and third party life insurance contracts when the insured party and the policyholder are different parties, but the policyholder has insurance interest in the life of the insured party.

Third parties, beneficiary and the insured party, may be parties to insurance liabilities.

Beneficiary is an individual or legal entity, to which benefit the policyholder executed life insurance contract.

If life insurance contract does not expressly specify beneficiary, the contract shall be deemed executed to the benefit of the insured party. In case of death of the party insured under the contract where other beneficiary is not expressly specified, successors of the insured party shall be entitled to receive insurance coverage.

In life insurance contract executed for the insurance of the insured party other than the policyholder beneficiary may be designated or amended only on the consent of the insured party or directly by the insured party himself/herself. In the absence of such consent, the contract may be invalidated at the suit of the insured party or in case of death of such party at the suit of his/her successors.

In accordance with Clause 956 of the Civil Code of the Russian Federation, the policyholder shall be entitled at own discretion to replace beneficiary specified in the insurance contract with the other party by notifying the insurer in written. If beneficiary fulfilled any liability under the insurance contract or made claims for insurance coverage against the insurer, his/her replacement is not possible.

The law does not lay obligations on the insurer for informing beneficiary on the insurance contract executed to his/her benefit. That's why the policyholder shall himself/herself explain to beneficiary when, on what terms and under which documents beneficiary may receive insurance coverage.

In Russia, investment life insurance became recently popular.

Investment life insurance contract represents a combination of classic accumulative unit-linked life insurance in the form of investment assets, in terms of which the insurer may pay to the policyholder or other party, to which benefit life insurance contract is executed, part of investment income in addition to the insurance coverage as part of life insurance.

Under this contract, the policyholder's insurance contributions are divided into two parts: one part constitutes secured coverage, which the policyholder or beneficiary receives in case of insured event, and the second part is invested by the insurance company into various investment products.

The ratio between two parts is not fixed. When the market grows, the insurance company increases the commercial part, which allows clients gain additional profit. When the market declines, most investments of clients evolve into conservatives of the stock market.

Unlike common accumulative life insurance, investment insurance stipulates possible additional proceeds not determined under the contract: if variation of prices and asset management policy prove to be relevant to the situation and investments become successful, there will be proceeds; if the situation develops adversely, the policyholder will receive only the amount specified in the contract.

Taxation and Special Status of Insurance Coverage

Under life insurance contract, in case of receipt of coverage related to the occurrence of the insured event, income shall be exempted of taxation: if under the terms of such contract insurance contributions are paid by the tax payer and (or) his/her family members and (or) close relatives in accordance with the Family Code of the Russian Federation, or if the amount of insurance coverage does not exceed the amount of paid insurance contributions plus the amount calculated by subsequent addition of products of sums of insurance contributions made from the day of insurance contract execution until the day of termination of each effective year of such voluntary life insurance contract (inclusive) and valid during the applicable year of annual average bank rate of the Central Bank of the Russian Federation. Otherwise, the difference between the said sums shall be recognized during determination of the tax base and shall be subject to withholding taxation Paragraph 1 of Clause 213 of the Tax Code of the Russian Federation.

Thus, in case of investment in the amount of 1 000 Rubles per month for a year, tax-exempt income shall equal 12 990 Rubles per year.

(10 000 Rub. × 12 months) + (10 000 Rub. × × 8.25% × 12 months) = 129 900 Rubles.

In case of execution of life insurance contract for more than 5 years, the taxpayer shall also be entitled to receive social tax deduction in the amount of paid insurance contributions for a year within 120 000 Rubles Paragraph 4 of Clause 219 of the Tax Code of the Russian Federation.

In case of execution of insurance contract for 10 years with required insurance contribution in the amount of 10 000 Rubles per month, the policyholder shall be entitled to decrease the tax base for PIT annually by 120 000 Rubles receiving tax deduction in the amount of 15 600 Rubles. In case of receipt of insurance coverage upon termination of contract, the amount of tax-exempt income shall equal 1 299 000 Rubles.

IF INSURANCE CONTRIBUTIONS ARE PAID BY A LEGAL ENTITY FOR THE BENEFIT OF AN INDIVIDUAL, TAX EXEMPTIONS SHALL NOT APPLY

Upon execution of life insurance contract, monetary funds paid as insurance contribution shall not be subject to seizure or custody, and also cannot be integrated into marital property in case of divorce because such monetary funds has actually been transferred to the insurance company, and the insured party's or beneficiary's right to dispose of the insurance coverage accrues only in case of occurrence of the insured event.

It is important to remember that if insurance contributions are paid by a legal entity for the benefit of an individual, tax exemptions shall not apply.

Execution of Documents

The list and procedures for submitting documents is defined under the insurance contract.

1. In case of occurrence of an insured event, the following documents (common for all insured events) shall always be submitted:
   - Application for coverage (in form certified by the department of insurance coverage and provided for completion by the employee of a branch or the head of the department of coverage of the Central Office);
   - Insurance contract (copy, if the Contract remains valid);
   - Identity documents (passport).
2. In case of death of the Insured Party, the following documents shall also be required for submission:
   - Notary certified copy of Death Certificate of the Insured Party (death certificate is given to relatives or interested parties. If beneficiary is not a relative, he/she needs to confirm his/her interest in receipt of death certificate by submitting to the civil registry office a copy of insurance contract);
   - Medical report on the causes of death, autopsy results (if any);
   - Certificate of the road traffic accident (if death occurred as a result of the road traffic accident).
3. In case the Insured Party becomes disabled, the following documents shall also be submitted:
   - Certified copy of certificate of the professional medical expert commission on the assessment of disability of the Insured Party;
   - Documents confirming occurrence of an accident (if disability assessed as a result of accident.
4. In case of accident involving the Insured Party, the following documents, which allow defining the amount of insurance coverage, shall be also submitted:
   - Documents of a medical institution specifying consequences of the insured event for health and working ability of the Insured Party;
   - Documents confirming the fact and circumstances of the accident issued by the official state authority (police, including the road police, fire service).

REVIEW OF SPECIAL ECONOMIC ZONE REGIME IN RUSSIA

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Pros and Cons of the Special Economic Zone

In recent times the topic of import substitution became quite relevant. Let us look around our native land: maybe, Kaliningrad and Magadan can be a worthy replacement of traditional tax heavens like Cyprus and Malta?

The key principles for organization of the special[1] economic zone (hereinafter — the SEZ) are common for the countries of the Customs Union[2]. The main privilege, which residents of the SEZ enjoy, lies in the opportunity to apply customs procedures of the free customs zone (hereinafter — the FCZ) to goods imported to the territory of the SEZ[3]. At application of the said procedure, goods are placed and used within the territory of the SEZ free of customs duties and levies. But these pros are complemented by material cons. Customs procedure of the FCZ applies only to those goods, which are designated for the performance by residents of business activity in accordance with the agreement on operation in the territory of the SEZ[4]. It means that only limited range of goods can be imported free of duty and VAT.

Goods may stay under the customs procedure of the free customs zone within the operation term of the SEZ, except cases when the party, which placed goods under the customs procedure of the FCZ, loses the status of resident[5].

The operation of the customs procedure of the FCZ ends upon export of applicable goods from the territory of the SEZ or upon transfer of the right of ownership for goods to non-resident of the SEZ[6]. At completion of the customs procedures of the FCZ, goods placed under such procedure, and also their derivatives are placed under other customs procedures depending on the status of goods[7]. Goods produced using foreign goods shall be recognized as goods of the customs union if they comply with one of the criteria of substantial processing of goods, namely:

- the classification code of goods under the unified Commodity Classifier for

1. Terms special economic zone and free economic zone are synonymous and are used herein with the same meaning.
2. Agreement on Free (Special) Economic Zones in the Customs Territory of the Customs Union and Customs Procedures applied in the Free Customs Zone, executed in St. Petersburg on 18.06.2010.
3. Paragraph 3 of Clause 9 of the Agreement, executed in St. Petersburg on 18.06.2010.
4. Paragraph 1 of Clause 11 of the Agreement, executed in St. Petersburg on 18.06.2010.
5. Clause 12 of the Agreement, executed in St. Petersburg on 18.06.2010.
6. Subparagraph 3,4 of Paragraph 2 of Clause 15 of the Agreement, executed in St. Petersburg on 18.06.2010.
7. Subparagraph 1 of Paragraph 2 of Clause 15 of the Agreement, executed in St. Petersburg on 18.06.2010.

foreign economic activity of the customs union has been amended at the level of any of the first 4 digits;

- the cost of goods has been amended when the percentage of cost of used materials or added value reaches fixed share in the cost of final product (the rule of ad valorem share);
- in respect of goods terms and production and technological operations required for recognition of goods made (produced) using foreign goods placed under the customs procedure of the free customs zone as the goods of the customs union has been fulfilled[8].

The requirement to pay taxes and customs duties upon completion of the customs regime of the FCZ depends on the status of goods. This dependence is shown in fig. 1.

In Russia there are 4 types of the SEZ, decision on the creation whereof is made by the Government of the Russian Federation[9]:

1. Industrial and production SEZ;
2. Technological development SEZ;
3. Tourism and recreation SEZ[10];
4. Port SEZ.

Kaliningrad and Magadan SEZ created under federal laws stand out among the rest[11].

The status of the resident of the SEZ is also attractive for its tax reliefs, to which it entitles. The precise volume of such reliefs depends on the type of the SEZ and the subject of the Russian Federation where it is located. However, the Tax Code of the Russian Federation stipulates a list of reliefs common for all types of the SEZ:

- reduced profit tax rate payable to the budget of subjects of the Russian Federation shall not exceed 13.5%;
- exemption of tax on property located in the territory of the SEZ created or acquired for operation under the agreement for the creation of the SEZ[12];
- exemption of land tax in respect of land plots located in the territory of the SEZ for 5 years from the moment of accrual of the right of ownership for the land plot[13].

Let us further consider additional reliefs provided depending on the type of zones.

Industrial and production SEZ:

- residents of these zones are entitled to apply accelerated depreciation defining multiplying ratio to main funds, but not exceeding 2[14].

Technical development SEZ:

- until 2018 profit tax rate payable to the federal budget shall equal 0%[15];
- reduced rates on insurance contributions payable by employers to the Pension Fund of the Russian Federation and the Social Insurance Fund of the Russian Federation are valid until 2019[16].

Tourism and recreation SEZ:

- for SEZ residents unified under the decision of the Government of the Russian Federation into a cluster, profit tax rate payable to the federal budget shall equal 0%[17];
- for SEZ residents unified under the decision of the Government of the Russian Federation into a cluster, reduced rates on insurance contribu-

8. Paragraph 2 of Clause 19 of the Agreement, executed in St. Petersburg on 18.06.2010.
9. Paragraph 1 of Clause 4 of Federal Law No. 116-FZ On Special Economic Zones in the Russian Federation dd. 22.07.2005.
10. In accordance with Paragraph 2 of Clause 36 of Federal Law No. 116-FZ On Special Economic Zones in the Russian Federation dd. 22.07.2005 customs procedure of the FCZ is not applied in the territory of tourism and recreation SEZ.
11. Federal Law No. 16-FZ On Special Economic Zone in Kaliningrad Region and on the Introduction of Amendments to Some Laws of the Russian Federation dd. 10.01.2006.
12. Paragraph 17 of Clause 381 of the Tax Code of the Russian Federation.
13. Paragraph 8 of Clause 395 of the Tax Code of the Russian Federation.
14. Subparagraph 3 of Paragraph 1 of Clause 259.3 of the Tax Code of the Russian Federation.
15. Paragraph 1.2 of Clause 284 of the Tax Code of the Russian Federation.
16. Subparagraph 5 of Paragraph 4, Paragraph 7 of Clause 33 of Federal Law No. 167-FZ On Mandatory Pension Insurance in the Russian Federation dd. 15.12.2001, Subparagraph 5 of Paragraph 1 of Clause 58, Paragraph 3 of Clause 58 of Federal Law No. 212-FZ On Insurance Contributions to the Pension Fund of the Russian Federation, Social Insurance Fund of the Russian Federation and the Federal Fund of Mandatory Medical Insurance dd. 24.07.2009.
17. Paragraph 1.2 of Clause 284 of the Tax Code of the Russian Federation.

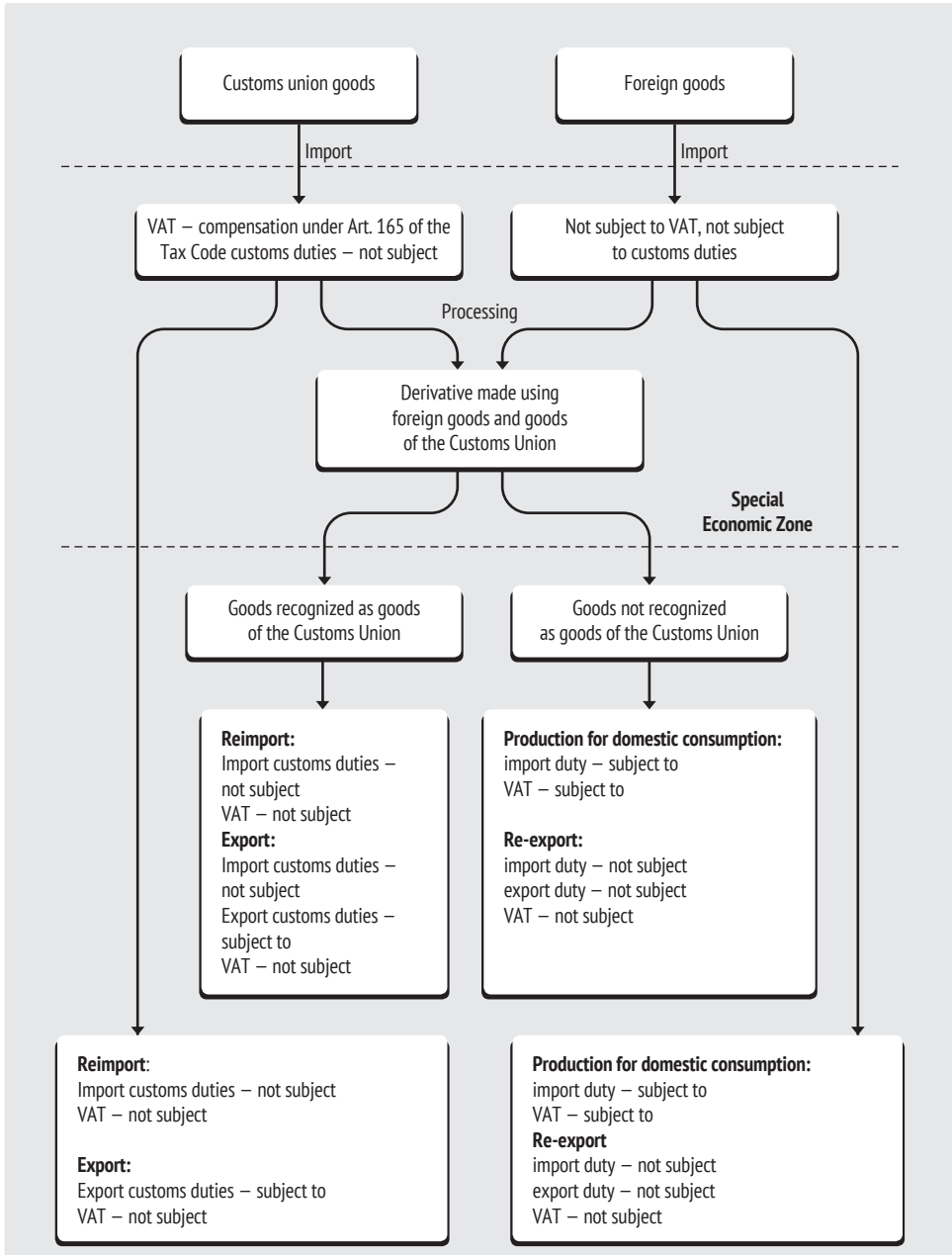


Fig. 1.

18. Subparagraph 5 of Paragraph 4, Paragraph 7 of Clause 33 of Federal Law No. 167-FZ On Mandatory Pension Insurance in the Russian Federation dd. 15.12.2001, Subparagraph 5 of Paragraph 1 of Clause 58, Paragraph 3 of Clause 58 of Federal Law No. 212-FZ On Insurance Contributions to the Pension Fund of the Russian Federation, Social Insurance Fund of the Russian Federation and the Federal Fund of Mandatory Medical Insurance dd. 24.07.2009.
19. Paragraph 27 of Paragraph 3 of Clause 149 of the Tax Code of the Russian Federation; complete information on tax reliefs in each SEZ is available on website of the Ministry for Economic Development of the Russian Federation: http://economy.gov.ru/minec/activity/sections/sez/preferences/taxconcession.
20. Paragraph 1 of Clause 9 of Federal Law No. 116-FZ On Special Economic Zones in the Russian Federation dd. 22.07.2005.
21. Paragraph 4 of Clause 10 of Federal Law No. 116-FZ On Special Economic Zones in the Russian Federation dd. 22.07.2005.
22. Order of the Russian Ministry for Economic Development No. 209 On Determination of Standard Forms of Agreements for the Performance of Industrial and Production, Technological Development, Tourism and Recreation Activity and Activity in Port Special Economic Zone dd. 13.04.2012.
23. Paragraph 2.5.2 of standard forms of agreements for the performance of industrial and production, technological development, tourism and recreation activity and activity in port Special Economic Zone.
24. Special control regulations are specified only for SEZ in Kaliningrad and Magadan Regions.
25. Paragraph 9 of Clause 11 of Federal Law No. 116-FZ On Special Economic Zones in the Russian Federation dd. 22.07.2005.

tions payable by employers to the Pension Fund of the Russian Federation and the Social Insurance Fund of the Russian Federation are valid until 2019[18].

Port SEZ:

- exemption of VAT payment for rendering services (work performance)[19].

Who can actually use reliefs waiting in the SEZ? A private entrepreneur or commercial organization, which executed agreement for the performance of business activity with SEZ authorities, is recognized as the SEZ resident[20]. These subjects of economic activity should be registered in the territory of the SEZ; the organization should have no branches or representative offices outside such SEZ.[21] The standard form of the agreement for residents of Russian SEZ is determined by the Ministry for Economic Development of the Russian Federation and is not subject to any revisions as a result of negotiations[22]. The main liability of the resident stipulated in the agreement is investment, including capital contributions:

- for industrial and production SEZ: within the first 3 years — not less than 40 mln Rubles, during the upcoming years of the agreement term — not less than 80 mln Rubles;
- for technological development SEZ: the minimum amount is not determined;
- for tourism and recreation SEZ: the minimum amount is not determined;
- for port SEZ: within the first 3 years — not less than 40 mln Rubles, during the upcoming years of the agreement term — not less than 360 mln Rubles[23].

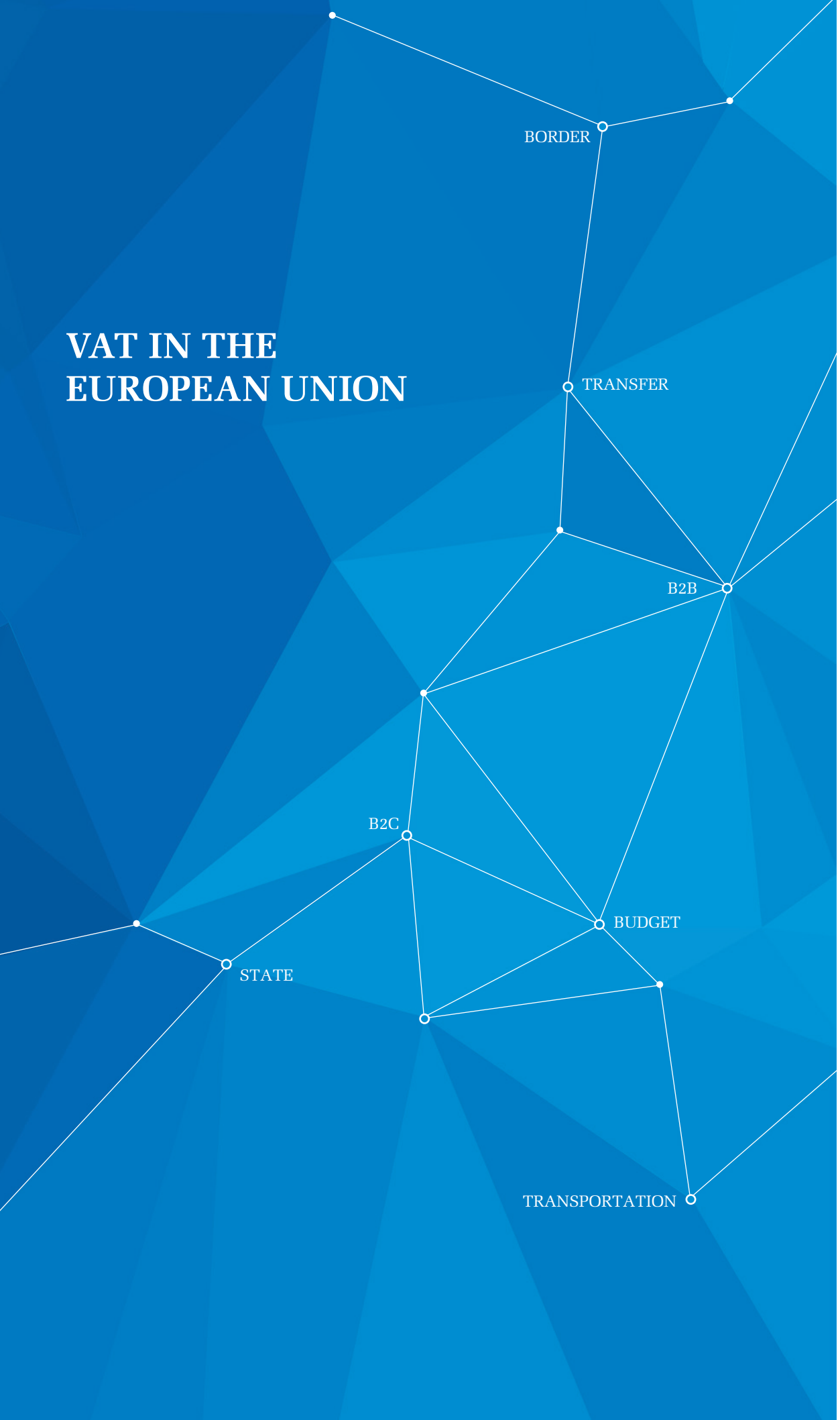
SEZ resident is entitled to perform only activity specified in the agreement. Failure to comply with such prohibition, and also failure to perform obligations of the investor shall be deemed a material breach of agreement terms, which constitutes the ground for its early termination.

Tax and customs control of SEZ residents is carried out following general procedures[24]. But their situation is complicated by the fact that 2 or more material breaches of tax and (or) customs law may entail withdrawal of resident status under the court decision[25]. A party, which lost resident status due to early termination of the agreement, shall pay penalty in the amount of 5% of the investment amount specified in the agreement, save for investments made as of the date of withdrawal of the resident status, but no more than 5 mln Rubles and not less than 150 000 Rubles[26].

Summarizing the foregoing, it should be noted that prior filing an application for the execution of the agreement for operation in SEZ thoroughly evaluates its pros and cons.

26. Paragraph 5.2 of standard forms of agreements for the performance of industrial and production, technological development, tourism and recreation activity and activity in port Special Economic Zone.

VAT IN THE EUROPEAN UNION



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VAT without Borders

In edition No. 3 for 2014, we have told how goods delivery activities are subject to VAT in the European Union. There, we have also promised a sequel on two other activities subject to VAT: rendering of services and import of goods into the European Union. In this article, we keep our promise.

The European law understands rendering of services as any activity, which does not constitute goods delivery, including the following activities:

- transfer of intangible assets;
- obligation to refrain from any action or permit any action;
- rendering of services under the law or the order of the government;
- temporary use of goods for personal goals of a tax payer not related to his/her business activity, if VAT for these goods was fully or partially declared for deduction;
- free of charge rendering of services by a tax payer for purposes not related to his/her business activity[1].

For determining location for service rendering it is essential who is the client: a party being the VAT payer or not. If a client is the VAT payer (hereinafter we shall refer to such operations as B2B), location for service rendering shall be deemed his/her location. If services are rendered to permanent representative office of the client, then it shall be the location of such representative office[2].

Example 1: a company located in Bulgaria renders accounting services to a company located in Austria. VAT calculated in accordance with Austrian rates shall be levied.

Example 2: a Polish company renders legal services to permanent representative office of Swedish company in Finland. VAT calculated in accordance with Finnish rates shall be levied.

If a VAT payer acquires services for personal use not related to business activity, location of service rendering shall be the location of the seller.

Example 3: a Portuguese company renders educational services to a company located in Denmark. VAT calculated in accordance with Portuguese rates shall be levied.

1. Clauses 24, 25, 26 of Directive 2006/112/EC of the European Union.
2. Clause 44 of Directive 2006/112/EC of the European Union.

The same rule applies if the client is not a VAT payer (hereinafter, B2C activity)[3].

Example 4: a company located in Greece renders consulting services to a private party living in Romania. VAT calculated in accordance with Greek rates shall be levied.

Thus, each time at rendering of services the contractor defines whether it will B2B or B2C activity. Generally, the VAT payer is any party performing business activity[4]. In practice, the number of registration as the VAT payer is the best evidence of business activity of a contracting party. The problem resides in the fact that almost in each state of the European Union there is a threshold level for annual turnover of small entities, without exceeding which economic subjects are not obliged to register as VAT payers[5]. If a contracting party cannot provide the number of a VAT payer, the service provider may demand other documents confirming B2B activities: certificate of a tax authority, official letter on the letterhead and other.

Classification according to B2B and B2C activities is not enough for defining location for service rendering. The European Union law specifies a number of services, in respect of which the place of rendering is recognized not as the location of the contractor or the client, but as the location of their actual rendering. The list of such services is set forth in the table.

EACH TIME AT RENDERING OF SERVICES THE CONTRACTOR DEFINES WHETHER IT WILL B2B OR B2C ACTIVITY

There are special regulations for defining location for implementing services rendered to private parties and non-commercial organizations through electronic communication channels (hereinafter, electronic services):

Type of Services	Rendering Location
Passenger transportation	Place where transportation took place is proportionate to the covered distance[6]
Cargo B2C transportation	Place where transportation took place is proportionate to the covered distance[7]
Cargo B2C transportation between states of the European Union	Place of departure[8]
Cultural, scientific, educational, sports, entertainment and other similar services	Place of actual rendering[9]
Services of restaurants and catering	Place of actual rendering[10]
B2C rental of transport vehicles	Place where a transport vehicle is made available to a client[11]

3. Clause 45 of Directive 2006/112/EC of the European Union.
4. Paragraph 1 of Clause 9 of Directive 2006/112/EC of the European Union.
5. Clauses 287, 288 of Directive 2006/112/EC of the European Union.
6. Clause 48 of Directive 2006/112/EC of the European Union.
7. Clause 49 of Directive 2006/112/EC of the European Union.
8. Clause 50 of Directive 2006/112/EC of the European Union.
9. Clauses 53, 54 of Directive 2006/112/EC of the European Union.
10. Clause 55 of Directive 2006/112/EC of the European Union.
11. Clause 56 of Directive 2006/112/EC of the European Union.

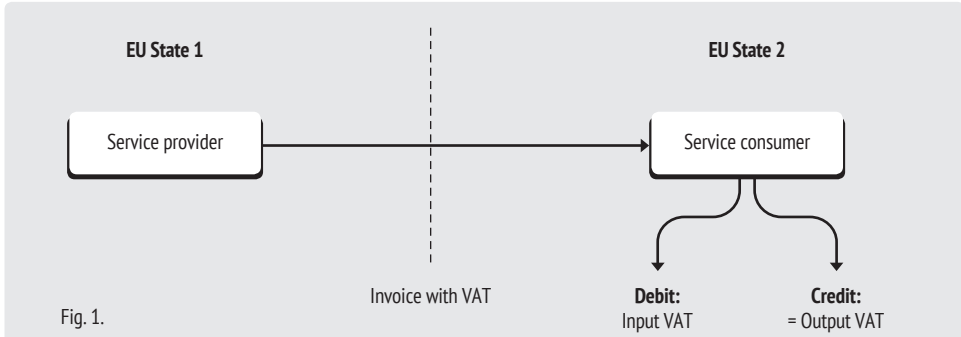

Fig. 1.

- telecommunication services;
- radio and TV broadcasting services;
- provision of websites, web hosting;
- software provision and upgrade;
- granting access to data bases and provision of music, video, games and texts;
- TV broadcasting;
- distance learning[12].

If a consumer of electronic services lives or is situated in the state of the European Union other than the seller, the state of the consumer shall be recognized as the location of rendering (unlike other B2C activities). This rule also applies, if the provider of electronic services is located outside the European Union.

Example 5: an English company granted access to electronic book to a person living in Spain. VAT calculated according to Spanish rates shall be levied.

Obligation to pay VAT from the activity is placed on the seller, if the client and seller are in the same state of the European Union[13]. But there is an exception. If the client and the provider of B2B activities are in different states, VAT shall be paid by the client in accordance with the mechanism for the payment of VAT at source of income (reverse charge mechanism, hereinafter, the RCM)[14]. Actual obligations for transferring money to the budget does not accrue: the client credits his/her VAT account with the amount of the output tax calculated out of the cost of the received service, and at the same time debits his/her account with equal amount of the input tax[15] (Fig. 1).

However, if the service provider registered in EU state 1 has acquired any goods or services (or imported goods) for the performance of activity subject to the RCM in EU state 2 and as a result has paid VAT to the third party in EU state 2, the amount of paid VAT shall be repaid from the budget of EU state 2[16] (Fig. 2).

If a company, which is the consumer of services in another state of the European Union, is not registered as VAT payer, it means its annual turnover does not exceed threshold level specified in the country of its location, input and output VAT for the client is not charged. The provider issues invoice with VAT; the cost of received services is added to the cost of services rendered by the client itself, depending on which it is required or not required to register as VAT payer.

Service provider subject to RCM shall monthly or quarterly submit to tax authority of its state a report specifying the following information:

- number of registration as VAT payers of consumers of the foregoing services;
- total cost of services rendered during the report period[17].

RCM is not applied in relation to services rendered to private parties, so providers of electronic services are not in a favorable position: they have to register

12. Clause 58 of Directive 2006/112/EC of the European Union.
13. Clause 193 of Directive 2006/112/EC of the European Union.
14. Clause 196 of Directive 2006/112/EC of the European Union.
15. Clause 168(a) of Directive 2006/112/EC of the European Union.
16. Clause 170(b) of Directive 2006/112/EC of the European Union.

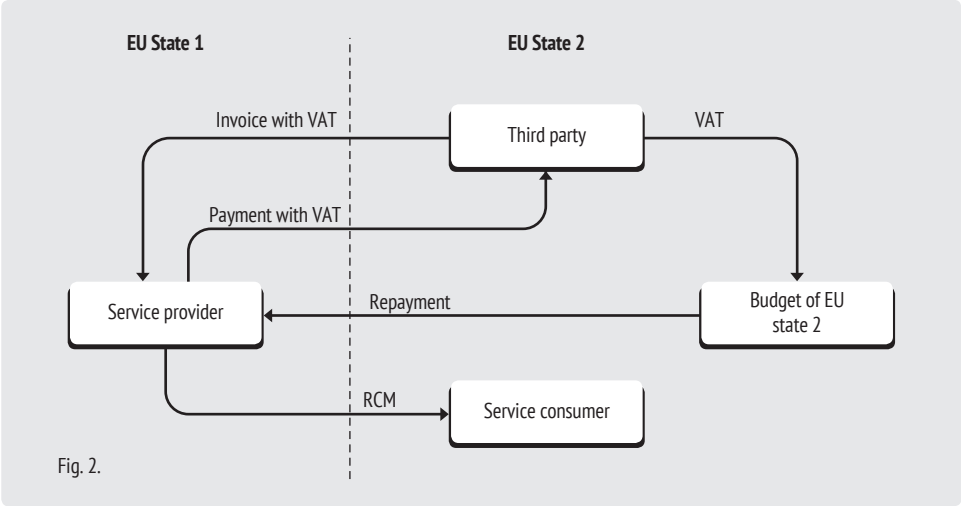

Fig. 2.

as VAT payers and pay tax in each state of the European Union where they render services to private parties. States solve this problem in different ways. In Great Britain, for example, there is Mini One Stop Shop service, which allows registered users to report VAT for payment in all states of the European Union; tax service of Great Britain sends tax returns and payments to authorities of applicable states.

Import of Goods

Import of goods for taxation purposes means import to the territory of the European Union of goods, which are not fully tradable in accordance with the treaty establishing the European Union (Treaty of Rome in 1957). It should be remembered that unified rules for taxation of activity on import of goods are not applied in certain territories included as a part of member states of the European Union, namely:

- Mount Athos;
- the Canary Islands;
- the French Overseas Territories;
- the Aland Islands;
- the Channel Islands;
- Heligoland;
- Busingen (Germany);
- Ceuta and Melilla;
- Livigno and Campione d'Italia;
- the Italian territory of Lake Lugano[18].

MAY RECEIVE EORI NUMBER ANY PARTY, WHICH INTENDS TO SUBMIT ENTRY OR CUSTOMS DECLARATIO N TO TAX AUTHORITIES OF THE STATE OF THE EUROPEAN UNION

A party registered in the System of Registration and Identification of Economic Operators (EORI scheme) may act as the importer of goods to the European Union[19]. Not only the party located within the customs territory of the European Union may receive EORI number, but any party, which intends to submit entry or customs declaration to tax authorities of the state of the European Union.[20] Application for the receipt of EORI number may be submitted upon the first transaction at the customs of the European Union.

17. Clause 264(b,d) of Directive 2006/112/EC of the European Union.
18. Clause 6 of Directive 2006/112/EC of the European Union.
19. Paragraph 1 of Clause 41 of the Regulation (EEC) 2454/93 of the European Commission.

According to the general rule, location of sale shall be deemed the state where goods are located right after import to the territory of the European Union.[21] However, if goods are imported under certain customs procedures, the location of sale shall be deemed the state where goods are released into free circulation.[22] Customs procedures, which grant delay of VAT payment, are stipulated in the national law of each state. For example, in Great Britain these are the following procedures:

- processing within the customs territory;
- temporary import with complete exemption customs duties;
- processing under customs control;
- procedure for customs warehouse;
- external or internal transit;
- procedure for temporary storage.

The national law may stipulate that delivery of goods, in respect of which one of preferential customs procedures is applied, shall be released of VAT . For example, according to the law of Great Britain, import of goods already delivered to the territory of such state, but not yet delivered to the customs point and temporary stored, shall be released of VAT (Fig. 3).

However, acquisition of goods under one of the said customs procedures in the other state of the European Union (IC-acquisition) implies obligation to pay VAT from transaction on acquisition, regardless that delay applies to VAT from import.

In order to define exactly which reliefs may be obtained upon placement of imported goods under any other customs procedures the general European law is not enough. Each time we should refer to the national law of the country of import.

However, the following rule is the same for all countries. If transfer of imported goods ends in the state other than the state where goods are located right after import to the territory of the European Union, then in such last state VAT from import is not levied[24] and goods are immediately released into free circulation (Fig. 4).

The importer may enjoy the said relief provided he/she submits to tax authorities of the state of import the following information:

- number of registration as VAT payer in the state of import or the number of its tax representative;
- number of registration as VAT payer of the seller in the state where the goods are subsequently imported;
- evidence that goods are sent or will be sent to other state of the European Union[25].

As it was already mentioned in the previous article dedicated to VAT in the European Union import of goods involving crossing of borders with the states of the European Union shall be released of VAT. Tax on this activity shall be paid by the buyer in the state of final destination

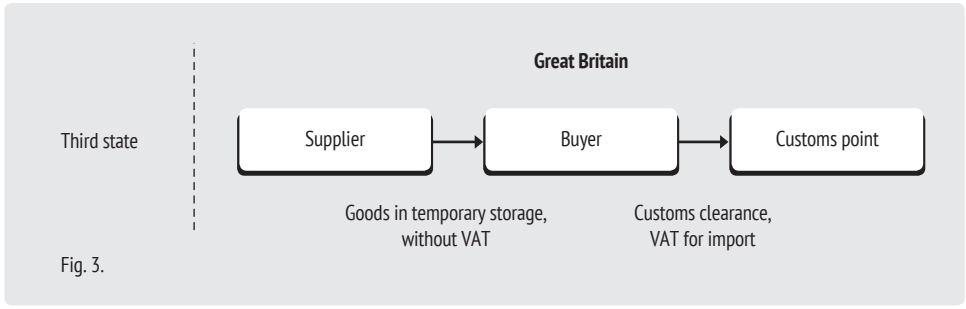

Fig. 3.

20. Paragraph 3 of Clause 41 of the Regulation (EEC) 2454/93 of the European Commission.
21. Clause 60 of Directive 2006/112/EC of the European Union.
22. Clause 61 of Directive 2006/112/EC of the European Union.
23. Clauses 156, 157 of Directive 2006/112/EC of the European Union.
24. Paragraph 1d of Clause 143 of Directive 2006/112/EC of the European Union.
25. Paragraph 2 of Clause 143 of Directive 2006/112/EC of the European Union.

Fig. 4.

of goods; and he/she acquires the right for deduction in the amount of payment.

Deduction of VAT paid for Import of Goods

VAT payer shall be entitled to submit for deduction VAT amounts[26] paid for import of goods used for taxable activity,[27] and also:

- cross-border import of goods in the European Union (IC-import);
- set of activities for acquisition of goods released of taxation (IC-acquisition);
- export operations;
- import of goods, in respect of which customs procedures granting release of VAT are applied.

Deduction may be specified in tax return for the period when import is made.

26. In accordance with the law of the European Union activity released of VAT shall be entitled to deduction as in accordance with the Russian law activity charged at 0% rate.
27. Clause 169 (b) of Directive 2006/112/EC of the European Union.

ANTI-MONEY LAUNDERING: HOW MONEY LAUNDERING IS FOUGHT IN CYPRUS

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Rendering corporate and fiduciary services in Cyprus is a regulated type of activity, which requires licensing. License for rendering such services is issued by a regulatory authority, Cyprus Security and Exchange Commission ("CySec"). CySec has issued license (registration number 14/196) for rendering corporate and fiduciary services to Korpus Prava Corporate Services.

RENDERING CORPORATE AND FIDUCIARY SERVICES IN CYPRUS IS A REGULATED TYPE OF ACTIVITY, WHICH REQUIRES LICENSING

Companies rendering corporate and fiduciary services are obliged to operate in accordance with anti-money laundering and anti-terrorism financing provisions (Anti-Money Laundering or shortly AML). Statutory regulation of AML is stipulated in the following laws:

- The Law Regulating Companies Providing Administrative Services and Related Matters of 2012 (L.196 (I)/2012) and the Amending Law 109(I)/2013 wef. 09/09/2013;
- Directives of the European Union:
  a) Directive 91/308/EEC of 10 June 1991 on Prevention of the Use of the Financial System for the purpose of Money Laundering (the 1st Directive);
  b) Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 on the Prevention of the Use of the Financial System for the purpose of Money Laundering (the 2nd Directive);
  c) Directive 2005/60/EC of the European Parliament and of the Council 26 October 2005 on the Prevention of the Use of the Financial System for the purpose of Money Laundering and Terrorist Financing (the 3rd EU Directive, also known as the "3MLD");
- The Prevention and Suppression of Money Laundering Activities Law (Law 188(I)/2007); This law brings the law of Cyprus in conformity with the 3rd EU Directive;
- The Directive of the Cyprus Securities and Exchange Commission for the Prevention and Suppression of

Money Laundering and Terrorist Financing (DI 144-2007-08 of 2012).

THE EXISTING WAYS OF FIGHTING MONEY LAUNDERING ARE AIMED AT PREVENTION AND RESPONSE TO LAYERING AND INTEGRATION STAGES

For the purposes of anti-money laundering, experts thoroughly study nature and mechanism of conducting unlawful financial operations. There are different ways of money laundering. There are three main stages:

- placement: placement of illegally obtained money by depositing cash, and also using other methods, in traditional financial institutions;
- layering: separation of money acquired by illegal means through using layers of complex financial operations, through transformation of money into travel checks, money transfers, wire payments, bills of credit, shares, debentures, acquisition of valuable assets, such as works of art or jewelry. Such transactions are made for concealing audit statements and securing anonymity;
- integration: final stage of money laundering when illegally obtained money return to the criminal. Money return by wire transfer to accounts of companies registered for illegal purposes or by sale of valuable goods acquired at the layering stage.

Regarding Cyprus, it should be noted that risk of money laundering at placement stage is minimal due to strong statutory regulation of cash turnover. The existing ways of fighting money laundering are aimed at prevention and response to layering and integration stages. Procedures set forth in laws that address fighting income laundering and terrorism financing are aimed at two main goals: first, identification and provision of information on shady transactions to relevant authorities, and secondly, application of Know Your Client (KYC) principle, and application of relevant accounting policy in case investigation is conducted in respect of a client. If necessary, provider of corporate and fiduciary services shall submit its report. In accordance with the foregoing law, providers of corporate and fiduciary services in their activity should apply a number of procedures:

1. Client identification, procedure for the acceptance of a client, evaluation of risks due to the acceptance of a client, KYC procedure.
2. Preparation of accounting statements.
3. Preparation of internal accounts and submission of accounts to MOKAS (anti-money laundering subdivision).
4. Detailed research of each deal, which by its nature may refer to money laundering of terrorism financing.
5. Notification of employees on:
   a) rocedures aimed at prevention of money laundering and terrorism financing;
   b) laws on anti-money laundering and anti-terrorism financing;
   c) directives issued by relevant controlling authorities in accordance with Section 59 (4) of the Law on the Prevention of Laundering of Income Acquired by Illegal Means and Terrorism Financing;
   d) directives of the European Union on the prevention of laundering of income acquired by illegal means and terrorism financing.
6. Constant training of employees for shaping their skills required for the performance of necessary actions for the prevention of laundering of income acquired by illegal means and terrorism financing.

Today, the Fourth EU Anti Money Laundering Directive (AMLD4) of the European Parliament and Council is drafted. Creation of this Directive is aimed at enhancement of efficiency of anti-money laundering and anti-terrorism financing,

at introduction of applicable amendments to already existent laws in this area. Today, the key amendments, which should be included into provisions of the Directive, are presented:

- regulation of interaction with politically exposed people (PEP) will be more strict, including creation of lists of PEPs, their close relatives and their property for the purposes of easing their identification;
- right for simplified procedure of client examination shall be abolished;
- sanctions for breach in the area of anti-money laundering and anti-terrorism financing shall be toughened;
- there is a plan to introduce a new system of risk evaluation at the EU level and the national level.

According to preliminary data, after the Fourth EU Directive comes to force Member States will have two years for bringing their national law in compliance with it.

Within the scope of its work, Korpus Prava Corporate Services performs all necessary procedures (KYC, internal examination of files of companies, identification of information on transactions, etc.) aimed at anti-money laundering and anti-terrorism financing set forth in AML law.

About the Company

Korpus Prava was established in 2003 in Moscow, Russia. Together with our offices in Russia, Cyprus, Malta, 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

Korpus Prava is a member of the Institute of Professional Auditors (НП ИПАР), Franco-Russian Chamber of Commerce (CCIFR) and Cyprus Fiduciary Association (CFA).

The Company is ranked in the leading international directory Legal 500 and the Top 50 law firms in Cyprus.

Korpus Prava is the organizer of the International Conference Eurogate, seminars, workshops and round tables devoted to business restructuring, tax optimization and changes in the legislation.

Since 2004, the Company publishes tax and legal journal for business owners and managers “Korpus Prava. Analytics”. The Company traditionally presents annual tax and legal reviews.

The specialists of Korpus Prava are regularly published in leading media such as “Big Consulting”, “Accounting, Tax, Law” (“Учет, налоги, право”), “Chief Accountant” (“Главбух”), “Business and Life” (“Экономика и жизнь”), “Your tax lawyer” (“Ваш налоговый адвокат”), “FBK” (“ФБК”) and other professional publications.

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