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New approach to the determination of tax residency of legal entities: now we'll begin to live like in Europe

International mutual assistance in tax matters: a helping hand or a noose around neck

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Dear readers,

I'm pleased to present to you a new issue of our corporate edition "Korpus Prava. Analytics".

No doubt that the most discussed subject this year is the law on controlled foreign companies. Therefore, the first edition of 2015 has been dedicated to this issue. The specialists of Korpus Prava have scrutinized the new law and analyzed all major provisions. In this edition you will find out not only the effect of the law on controlled foreign companies, but you will also find instructions that will serve as guidelines for further actions, and most importantly, and as a starting point, since business restructuring will affect many people.

In the middle of the edition, you will find investigation of our experts with respect to the laws on controlled foreign companies (section "Experts comments on specific issues related to the implementation of CFC"): main issues, misinterpretations, controversies. We hope that you this information will prove useful for you and will certify current trends.

Please be assured that the company Korpus Prava is ready to provide personal advice and develop private solutions for your business. Given the complexity and urgency of the issue, we advise our clients to analyze current capital structure and management of the company, special attention shall be paid by companies receiving passive income, the pros and cons of tax resident status shall be assessed and customized solution shall be developed. Please feel free to contact us if you have any further questions.

We always appreciate feedback of our readers. If you have ideas with respect to the subject of our further editions, make sure you let us know. Please find our contact details at the end of the journal.

I wish you success and stability in the New Year!

Artem Paleev
Managing Partner
Korpus Prava


a hot stove

Founder and Publisher

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МГЮА

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WHAT THE PAST YEAR LEFT: TAX LEGISLATION AMENDMENTS

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When there are disasters around such as law on controlled foreign companies, it is difficult to get distracted and to pay attention to anything else relating to taxes. However, the Tax Code sheds its editions like leaves and, whether we like it or not, we shall follow this process in order to not be trapped. The past year was rich in innovations: in this article we will try to outline the most important of them.

1. From 1 January 2015 the list of cases when the tax authority may demand documents from the taxpayer in the course of the desk audit is extended. Now the inspectorate has the right to check invoices, primary and other documents relating to transactions reflected in the VAT return, if it found:

- differences in the data on transactions contained in the VAT return;
- inconsistencies between the data on transactions contained in the VAT return submitted by the taxpayer and the data on the same transactions submitted by another taxpayer;
- inconsistencies between the data on transactions contained in the VAT return submitted by the taxpayer and the data on the same transactions reflected in the ledger of invoices received and issued.

The demand of invoices and primary documents is legal provided the identified differences evidence understatement of the amount of VAT payable or overstatement of the amount of tax recoverable.

Inspection of areas, rooms of the taxpayer that previously could be made as part of the field tax audit only, now is possible in the course of the desk audit as well. The grounds for the inspection can be:

- the above differences in the VAT return, which evidence understatement of the amount of VAT payable or overstatement of the amount of tax recoverable;
- the VAT return with the tax amount stated as recoverable.

Thus, if you state VAT as recoverable in 2015, wait for uninvited guests.

2. Since the beginning of the new year the VAT return to be submitted electronically, but was submitted on paper, is not deemed submitted[1]. I.e. even

1. Point 5 of article 174 of the Tax Code of the RF, edition from 29 December 2014.

if the terms of submission of returns are met, but the requirement related to its form is not complied with, the taxpayer may be held accountable for failing to submit tax returns. The new rules also apply to the specified tax returns submitted from 1 January 2015 for the past periods.

VAT payers are no more obliged to maintain ledgers of invoices received and issued[2]. This innovation is designed to reduce excessive paperwork, since the information specified in ledgers is duplicated in the purchase ledger and sales ledger. As a consequence, the copy of the ledger of invoices received and issued is excluded from the list of documents confirming the right to be released from the obligations of VAT payer[3].

FROM THE BEGINNING OF THE NEW YEAR, THE INTERESTS ON THE DEBT OBLIGATIONS OF ANY KIND ARE RECOGNIZED INCOME (EXPENSE) FROM THE PROFITS TAX BASED ON THE ACTUAL RATE

In 2014, the ledger of invoices received and issued had to be maintained by entities that were not VAT payers, in the case of issue or receipt by them of invoices in carrying out activity for the benefit of another entity on the basis of engagement agreements, commission agreements or agency agreements[4]. From 1 January 2015, this obligation applies to entities receiving or issuing invoices as part of implementation of freight forwarding agreements or while performing the function of builder. This rule now applies both to taxpayers that are exempt from the obligation to pay VAT and to entities that are not VAT payers.

3. From the beginning of the new year, the interests on the debt obligations of any kind are recognized income (expense) from the profits tax based on the actual rate[5]. For transactions recognized controlled ones, one of the parties in which is the bank, the new edition of the Tax Code established a limit on the amount of interests that can be taken into account for the calculation of tax. For example, as for the debt obligation in rubles the limits of interest rates ranges from 75 to 180% of the refinancing rate of the Bank of Russia (for the period from 1 January to 31 December 2015), from 75 to 125% (from 1 January 2016). If these requirements are not met, the income (expense) is recognized the interest calculated based on the actual rate taking into account the transfer pricing rules.

4. From 1 January 2015 the concept of sum difference and the special procedure of its accounting are excluded. Now the fluctuation in the value of claims denominated in foreign currency, but payable in rubles due to change in foreign currency exchange is recognized difference in exchange rate[6]. The sum differences arising in transactions entered into before 1 January 2015 are accounted for tax purposes in the same order. The new accounting rules apply to the sum differences that arise in transactions concluded since the beginning of the new year. These rules apply if the additional evaluation or the devaluation of property is made in connection with one of the following events:

- change in the official exchange rate established by the Bank of Russia;
- change in the foreign currency exchange rate against the ruble established by law or by agreement of the parties, provided that the value of the claims (liabilities)

2. Point 3 of article 169 of the Tax Code of the RF, edition from 29 December 2014.
3. Point 6 of article 145 of the Tax Code of the RF, edition from 29 December 2014.
4. Point 3.1 of article 169 of the Tax Code of the RF from 24 December 2014.
5. Point 1 of article 269 of the Tax Code of the RF from 29 December 2014.
6. Point 11 of article 250 of the Tax Code of the RF from 29 December 2014.

denominated in this currency that are payable in rubles is determined according to the rate established by law or by agreement of the parties, respectively.

The procedure for recognition of foreign exchange differences income and expenses remained virtually unchanged. However, now the claims (liabilities), the value of which is denominated in foreign currency, are translated into rubles according to the official exchange rate established by the Bank of Russia, for the last day of the current month, and not for the last day of the reporting (tax) period, as previously[7]. The exchange rate differences in the previous edition of the Tax Code were recognized income and expenses for the last day of the current month as well[8]. In this regard the tax accounting rules have become uniform.

5. From 24 June 2014 the Tax Code provides binds the depositary, trustee and Russian organizations to withhold tax on profit on dividends payable not only to foreign, but to Russian companies as well[9]. At first glance, it seems strange that the law establishing new obligations for taxpayer (tax agent), entered into force in the middle of the tax period[10]. This measure was taken due to the uncertainty appeared since the beginning of 2014 regarding the functions of the aforementioned persons as tax agents. Under the previous edition of the Tax Code, they were recognized tax agents only upon payment of dividends to a foreign organization. Since, in accordance with the amendments to the Federal Law "On the Securities Market", which entered into force on 1 January 2014, the depositary is not obliged to disclose to the issuer the information on shareholders, the issuer has no information about what is the recipient of income in the form of dividends on the shares — a Russian or a foreign organization. Consequently, the issuer can not be recognized a source of income in the form of dividends for a Russian organization. In its Letter the Russian Ministry of Finance pointed out that from 1 January 2014 the depositary, where custody accounts of holders — Russian organizations are opened, is a source of income for such organizations and, therefore, is recognized a tax agent in such payments[11].

In the first half of the year 2014 the depositary's obligations to withhold tax on dividends payable to foreign organizations were provided for only by the said by-law. The old version of the Tax Code was applicable. Therefore, the organizations, which failed to perform the obligations of tax agent in the payment of dividends to Russian organizations in 2014, are exempt from the liability by the Federal Law that brought the appropriate amendments[12]. The Russian organizations that actually received in 2014 income in the form of dividends on shares on which the tax agent did not withhold the tax, are obliged to independently calculate and pay the profits tax prior to 28 March 2015[13].

6. From 1 January 2014 the provisions of the Federal Law of 28 December 2013 No. 420-FZ, under which the income (expenses) from transactions with marketable securities shall be accounted under the common procedure in the common tax base came into force. The common tax base means the tax base for the profit taxable at the rate of 20%[14]. According to such tax base no procedure for accounting of profit and losses different from the common procedure is provided for — previously taxpayers, except for professional participants of the securities market, had to determine it individually. Apart from the common tax base, the tax base is determined given the

7. Point 8 of article 271, Point 10 of article 272 of the Tax Code of the RF from 21.07.2014.
8. Sub-point 7 of point 4 of article 272; sub-point 6 of point 7 of article 272 of the Tax Code of the RF from 24 December 2014.
9. Sub-points 1–4 of point 7 of article 275 of the Tax Code of the RF, edition from 21.07.2014.
10. Point 1 of article 5 of the Tax Code of the RF.
11. Letter of the Ministry of Finance of Russia from 14 May 2014 No. 03-08-13/22654.
12. Point 1 of article 3 of the Federal Law from 23 June 2014 No. 167-FZ "On amendments to chapters 23 and 25 of the Tax Code of the Russian Federation".
13. Point 2 of article 3 of the Federal Law from 23 June 2014 No. 167-FZ "On amendments to chapters 23 and 25 of the Tax Code of the Russian Federation".
14. Point 1 of article 280 of the Tax Code of the RF, edition from 29 December 2014.

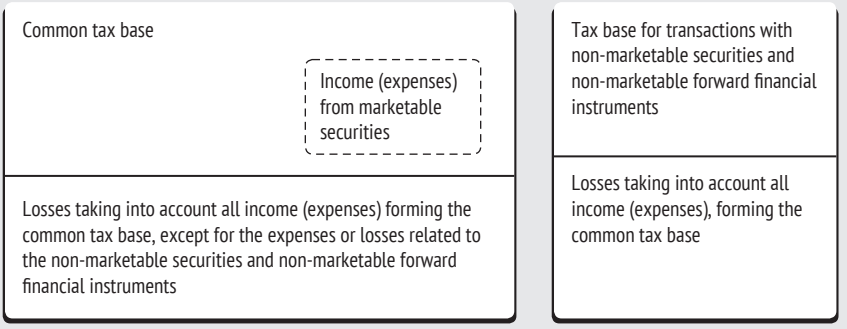
total transactions with non-marketable securities and non-marketable forward financial instruments[15].

Previously, according to the legislation the taxpayer had to define individually in its accounting policy the types of securities (marketable or non-marketable securities on an organized market) in transactions with which, upon the formation of the tax base the income and expenses include other income and expenses in transactions with securities[16]. I.e. the tax base for such transactions could be reduced only by the related expenses, such as broker fees. Now the losses, calculated taking into account all income (expenses) of the taxpayer, may be aimed at reducing the tax base (profit) for transactions with non-marketable securities and non-marketable forward financial instruments[17]. However, the losses from transactions with non-marketable securities and non-marketable forward financial instruments can not reduce the income from transactions with marketable securities[18]. Thus, the mechanism for determination of the tax base for transactions with securities from 1 January 2015 is as follows:

The losses on completed transactions arisen prior to 31 December 2014 inclusive, and previously not taken into account in the determination of the tax base, reduce the common tax base of the tax periods since 1 January 2015, but not more than 20% of the original amount of such losses as of 31 December 2014 annually until 1 January 2025[19]. A similar rule is established in respect of the losses from the transactions with non-marketable securities and non-marketable forward financial instruments.

7. According to the common rule the organizations applying the simplified taxation system are exempt from property tax[20]. From 1 January 2015 this exemption does not cover the real estate, in respect of which the corporate property tax base is defined as cadastral value. Such real estate includes:

- administrative and business centers, shopping centers and facilities in them;
- non-residential facilities, the purpose of which is accommodation of offices, retail facilities, catering facilities and household services (or which actually are used for these purposes);
- real estate of foreign organizations that do not operate in the Russian Federation through a permanent establishment[21].



15. Point 22 of article 280 of the Tax Code of the RF, edition from 29 December 2014.
16. Point 8 of article 280 of the Tax Code of the RF, edition from 21.07.2014.
17. Point 24 of article 280 of the Tax Code of the RF, edition from 29 December 2014.
18. Point 21 of article 280 of the Tax Code of the RF, edition from 29 December 2014.
19. Point 3 of article 5 of the Federal Law from 28 December 2013 No. 420-FZ "On amendments to article 27.5-3 of the Federal Law "On the securities market" and the first and second parts of the Tax Code of the Russian Federation".
20. Point 2 of article 346.11 of the Tax Code of the RF.
21. Point 1 of article 378.2 of the Tax Code of the RF.

In 2014, the tax base for the corporate property tax was already determined as cadastral value of the real estate applicable to the taxpayers operating under the common taxation system in those regions of the RF where the relevant law was adopted. Now this rule applies to the simplified taxation system as well.

FROM 1 JANUARY 2015 THE LAW OF THE RF SUBJECT CAN ESTABLISH THE TAX RATE AMOUNTING TO 0% FOR INDIVIDUAL ENTREPRENEURS, REGISTERED FOR THE FIRST TIME AFTER THE SAID DATE

The organizations paying the uniform tax on imputed income (hereinafter — the UTII), previously were also exempt from property tax in respect of those real estate that is used in the activity subject to UTII[22]. In April 2014 the Federal Law that changed this rule was published: now this exemption does not apply to real estate, in respect of which the corporate property tax base is defined as cadastral value[23]. The UTII amount for 2014 shall be calculated for the period from 1 July 2014 till 31 December 2014 as ½ of the cadastral value of the real estate as of 1 January 2014, multiplied by the appropriate tax rate net of the calculated amount of the advance payment for 9 months of 2014[24]. The amount of the advance payment is calculated as ¼ of the cadastral value of the real estate as of 1 January 2014, multiplied by the appropriate tax rate.

8. From 1 January 2015 the law of the RF subject can establish the tax rate amounting to 0% for individual entrepreneurs, registered for the first time after the said date[25]. This benefit is provided for entrepreneurs operating under the simplified or patent tax system, and only for the types of entrepreneurial activity that will be determined by the law of the RF subject. Following the tax period, the share of income from the activities subject to the tax rate amounting to 0%, in the total income shall make up at least 70%. The tax benefit will be applicable continuously during 2 tax periods from the date of state registration. The "tax holidays" are established till 1 January 2021; after that date the benefits do not apply.

9. Criminal proceedings on tax and duty evasion are now instituted under the common procedure. In 2011 the Criminal Procedure Code of the RF was amended so as the basis for institution of such proceedings could be only materials sent by the tax authorities to the investigative authorities to decide on institution of criminal proceedings[26]. In October 2014 this procedure was cancelled[27].

CRIMINAL PROCEEDINGS ON TAX AND DUTY EVASION ARE NOW INSTITUTED UNDER THE COMMON PROCEDURE

The information on tax offences received from the investigative authority are sent by the investigator to the tax authority which is higher than the tax authority, where the taxpayer is registered, not later than 3 days from the receipt of the relevant information. The tax authority shall, not later than 15 days from the receipt of the communication, send to the investigator the appropriate opinion on the existence of violation of the legislation on taxes and obligations, or on the lack of information about such violation. Tax inspectors can also inform the investigator that the decision on the

22. Point 4 of article 346.26 of the Tax Code of the RF.
23. Point 4 of article 346.26 of the Tax Code of the RF, edition from 01 January 2015.
24. Letter of the Ministry of Finance of Russia from 02 June 2014 No. 03-05-05-01/26195.
25. Article 1 of the Federal Law from 29 December 2014 No. 477-FZ "On amendments to Second Part of the Tax Code of the Russian Federation".
26. Point 1.1 of article 140 of the Criminal Procedure Code of the RF, edition from 06 August 2014.
27. Article 1 of the Federal Law from 22 October 2014 No. 308-FZ.

results of a tax audit is not yet made or has not entered into force.

After obtaining the opinion of the tax authority, but not later than 30 days from the receipt of the communication on the offence, following the results of review of this opinion the investigator shall make a procedural decision. If there are reasons and sufficient data evidencing the constituent elements of offence, the investigator can institute criminal proceedings before receiving from the tax authority such opinions or information as well.

In addition, now bodies of inquiry may carry out urgent investigative actions in criminal cases on tax offences[28].

28. Article 1 of the Federal Law from 22 October 2014 No. 308-FZ.

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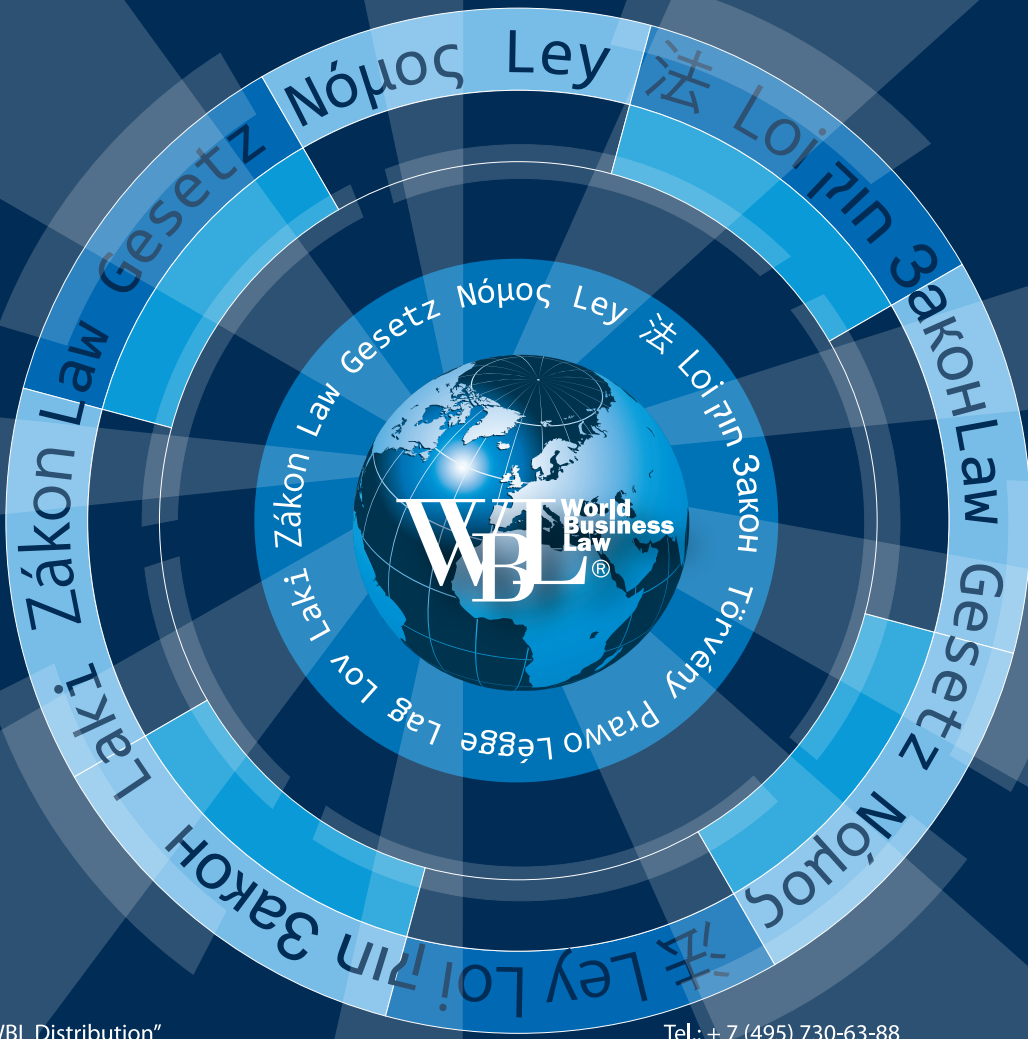

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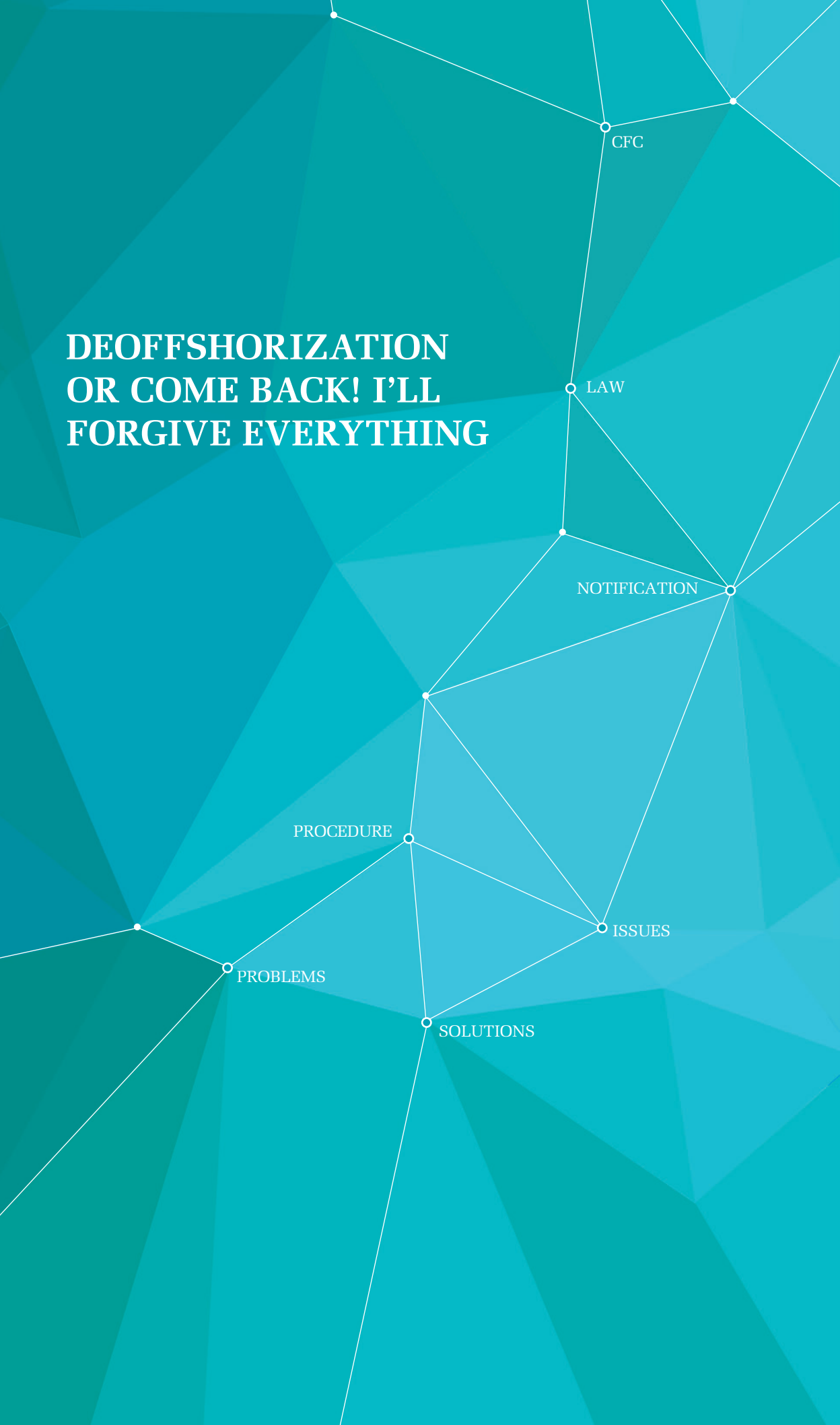

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In December 2013 in the address to the Federal Assembly the president Vladimir Putin stated that Russia needs a system of measures for "deoffshorization" of the Russian economy. "Our entrepreneurs are often criticized for lack of patriotism", — the president reminded. According to him, some estimates evidence that 9 out of 10 transactions, including transactions with state-owned companies, are not subject to the Russian laws. "We need to ensure transparency of offshore companies, as many countries do", — Putin said.

RUSSIAN BUDGET CAN GET AN ADDITIONAL INCOME AMOUNTING TO 6 BILLION US DOLLARS ONLY DUE TO TAXATION OF DIVIDENDS

He noted that if companies chose other jurisdictions, the deficiencies of our system shall be addressed.

As estimated by the Bank of America Merrill Lynch, Russian budget can get an additional income amounting to 6 billion US dollars only due to taxation of dividends, taken away in offshore zones to avoid taxation. Russian residents own 60 th. of foreign companies, of which 15 th. are registered in Cyprus, 5.5 th. — in the Virgin Islands, 3.5 th. — in the Seychelles.

Inspired by the instructions of the President, the Ministry of Finance developed a bill on controlled foreign companies.

On 18 March 2014 the Ministry of Finance posted on its official website the first version of the bill "On amendments to the first and second parts the Tax Code of the Russian Federation (in terms of taxation of profit of controlled foreign companies and improvement of efficiency of tax administration of foreign organizations)", which caused active controversy in the business circles. The bill was worked out within eight months repeatedly. Finally, on 25 November 2014 the bill was signed by the President and will become effective on 1 January 2015.

The law on controlled foreign companies (the so-called "CFC law" — a term derived from the abbreviation "Controlled Foreign Company") is an institution first established in the legal system of the United States of America. The essence of the CFC law consists in the fact that the profit of companies registered in low-tax or tax-exempt jurisdictions and countries controlled

by residents applying high rates of profits (income) tax, for tax purposes undertake to report the profit received from controlled companies as their own profit, and pay on it the tax according to the national rates of the actual recipient of profit (income).

Basic Provisions of the Law

The law obliges the Russian companies and individuals to pay the tax (20% or 13% respectively) on retained profit of controlled foreign company.

THE LAW OBLIGES THE RUSSIAN COMPANIES AND INDIVIDUALS TO PAY THE TAX (20% OR 13% RESPECTIVELY) ON RETAINED PROFIT OF CONTROLLED FOREIGN COMPANY

The law introduces the concept of controlled foreign company and expands the legal interpretation of the term "controlling persons".

Controlled Foreign Organization

The law provides for two conditions for the recognition of an organization controlled foreign company:

1. The organization is not a tax resident of the Russian Federation;
2. The persons controlling the organization are individuals or legal entities — tax residents of the Russian Federation;

However, the law contains a list of conditions for exemption of profit of controlled foreign companies from taxation, in particular:

1. The organization is a non-profit entity that does not distribute obtained profit (income) among the shareholders (members, founders) or other persons;
2. The organization is established under the legislation of the member-state of the Eurasian Economic Union;
3. The organization is permanently located in the country (territory) included in the list of countries (territories), which provide for the exchange of information for tax purposes with the Russian Federation, and the effective rate of taxation of income (profit) for such foreign organization makes up at least 75% of the weighted average corporate profits tax;
4. The organization is an active company (at most 20% of its income is passive), provided it is located in the countries having an international tax agreement with the Russian Federation;
5. The organization is a foreign entity without legal personality meeting all of the following conditions:
   - the incorporator (founder) is not entitled to receive assets of this entity with the property right;
   - the rights of the incorporator (founder) can not be transferred to another person except for inheritance or universal succession;
   - the incorporator (founder) is not entitled to receive, whether directly or indirectly (receipt by a mutually dependent person of profit (income) of the entity for the benefits of that person) any profit (income) of the entity distributable among all its members (unit holders, principals or others) or beneficiaries;
6. The organization is a bank or an insurance company, the permanent location of which is in the country included in the list of countries (territories) providing for the exchange of information for tax purposes with the Russian Federation;
7. The organization is an issuer of certain types of Eurobonds, if the

share of interest income from these bonds makes up at least 90%

8. The organization is involved in foreign oil production projects — the share of income from oil production projects makes up at least 90%;
9. It is operator of offshore projects and their direct shareholders (members).

Controlling Person

Controlling person is:

1. The person whose share of participation in the organization makes up over 25 percent;
2. The person whose share of participation in the organization jointly with his/her spouse and (or) minor children, makes up over 10 percent, if the share of direct and (or) indirect participation of all persons recognized as tax residents of the Russian Federation in this organization jointly with their spouses and (or) minor children makes up over 50 percent.

Note that the share of participation of such person in the organization or other entity is determined by adding the shares of:

- the beneficiary;
- the spouse;
- his/her minor children (including adopted ones);

During the transition period (until 1 January 2016), the percentage of beneficial weight makes up 50% for two criteria mentioned above.

Procedure for Notification about Controlled Companies

Taxpayers are obliged to notify the tax authority about their shares of participation in foreign organizations and foreign entities without legal personality and notify about controlled foreign companies.

The taxpayer must notify the tax authority about:

- its share of participation in foreign organizations, if such share makes up over 10%;
- its share of participation in foreign entities without legal personality, if the taxpayer is incorporator of such entity or a person having actual right to the income (profit) of such entity in case of its distribution;
- controlled foreign companies in respect of which it is a controlling person.

The statements in the form of a notice about share of participation in a foreign organization shall be submitted not later than 1 month from the date of occurrence (change of the share) of participation in such foreign organization. If in the period after notification about participation in a foreign organization the grounds for such notification remain unchanged, no repeat notice shall be provided.

The law lays down the right of the tax authorities in the case where they have reasons to believe that the taxpayer is a controlling person of a foreign organization/entity without legal personality, and provided that such person did not sent to the tax authority a notice of a controlled foreign company, to require the taxpayer to submit within 20 days the necessary explanations or directly the notice.

Legal Consequences of Presence of Controlled Foreign Companies in the Group Structure

As for the procedure for calculation of the profit of the controlled foreign company, the law provides for the following:

- The profit of a controlled foreign company registered in a jurisdiction which has an international tax agreement with the Russian Federation, is subject to calculation on the basis of the financial statements of such company prepared in accordance with its own legislation (provided that the

financial statements are subject to mandatory audit);

- In all other cases, the mechanism for the calculation of profit "in accordance with chapter 25 of the TC RF" applies.

If according to the financial statements of the controlled foreign company prepared in accordance with its legislation for the fiscal year, a loss incurred, such loss can be carried forward to future periods without restrictions and can be taken into account in determining the tax base of such company.

IT IS EXPECTED TO ESTABLISH SIGNIFICANT PENALTIES FOR VIOLATION OF THE OBLIGATIONS OF NOTIFICATION AND FOR FAILURE TO DISCLOSE DATA ON PROFIT OF CONTROLLED FOREIGN COMPANIES

The specified amount of profit of the controlled foreign company shall be divided between the controlling persons in proportion to their shares of participation in the organization. If such share can not be determined, the profit of such foreign company is taken into account in proportion to the number of members.

However, it should be noted that the profit of the controlled foreign company shall be taken into account in determining the tax base, if its value make up over 10,000,000 rubles.

It is expected to establish significant penalties for violation of the obligations of notification and for failure to disclose data on profit of controlled foreign companies. The law provides for the following tax-related penalties:

1. A fine of 100,000 rubles for failure to provide information about the companies, the activity of which is controlled by the taxpayer through a third party. A similar penalty is provided for provision by the taxpayer of false documents and information.
2. A fine of 100,000 rubles for each controlled foreign company, the data about which were not submitted by the taxpayer to the tax authority.
3. A fine of 20% of the hidden profit, but not less than 100,000 rubles for failure to pay or partial payment of corporate profits tax or personal income tax in respect of the profit of controlled foreign company (no fine is charged in the transition period 2015–2017).

Tax Aspects of Liquidation of a Foreign Company

In accordance with the law if the organization under liquidation is a foreign organization, the income in the form of the cost of obtained property (property rights) of the taxpayer-shareholder (member, unit holder) recognized as a controlling person of such foreign organization is not included in the tax base. This provision is temporary and applies only till 1 January 2017. This rule is transitory and is introduced in order to encourage restructuring of Russian groups to comply with the new rules of controlled foreign companies.

Issues on Application of the Law

The issue on the applicability of the Western experience of control of foreign companies in Russia remains unsolved. The real possibility of the Russian tax authorities to obtain information on the beneficiaries and shareholders of foreign companies consists in the application of international agreements on the exchange of information. However, there are no such agreements signed between the Russian Federation and the territories blacklisted by the Russian Finance Ministry.

Thus, the following mandatory action of the Russian Finance Ministry shall be development of the strategy allowing

obtaining information about availability at the Russian individuals and legal entities of income from organizations registered in offshore zones, such as, for example, information about the flow of the accounts of Russian entities in banks outside the Russian Federation.

THE REAL POSSIBILITY OF THE RUSSIAN TAX AUTHORITIES TO OBTAIN INFORMATION ON THE BENEFICIARIES AND SHAREHOLDERS OF FOREIGN COMPANIES CONSISTS IN THE APPLICATION OF INTERNATIONAL AGREEMENTS ON THE EXCHANGE OF INFORMATION

It seems that the only effective method allowing receiving such information is the introduction of tools of control over the transactions made through the accounts of the Russian citizens and legal entities opened with banks, including outside the Russian Federation. A similar method is used by the US public authorities in the implementation of the FATCA, obliging all banks with which accounts of American residents are opened to disclose relevant information to the US tax department. However:

- objectively FATCA is imposed to the international community by establishing prohibitive tax rates for banks that refuse to provide such information;
- the prohibitive measures described above can apply only to transactions carried out by the relevant banks in the country that established them. Thus, the banks that did not adhere to FATCA shall pay a 30% tax on transactions on accounts opened in the USA;
- similar legislation implies a significant violation of the banks of the national legislation on bank secrecy in most countries where banking transactions are carried out.

Consequently, for a similar tool to be implemented in Russia, foreign banks shall be so interested in carrying out transactions in Russia as to be ready to provide the relevant information to the Russian tax authorities.

In addition, if a system of control of foreign companies, the beneficiaries of which Russian persons/entities are, is established in Russia (irrespective of whether it is established on the basis of the considered law or on any other document), the beneficiaries will be obliged to a certain extent to notify the supervisory authorities whether they have or not controlled foreign companies. And in this case, the only truly effective tool of coercion will be sanctions imposed on offenders. The fines proposed by the authors of the new law amounting to 100,000 rubles will not be able to become a truly effective tool, and will be considered by taxpayers just an additional (not too significant) fee charged from their business.

Problems and Solutions

The CIC law lays down two obligations:

- to provide information on holding shares of participation in foreign companies
- to pay tax on undistributed profit of CIC to the Russian budget

Thus, when deciding on restructuring their business taxpayers shall answer for themselves the following questions: is critical for the beneficiary the disclosure of information on share of participation in foreign companies? If the answer is positive, almost the only way out for taxpayers is to cease to be tax residents of Russia. In this case, it will be necessary to choose the appropriate country to move taking into account the local legislation on the similar issue.

If the answer is negative, the simplest and the most obvious solution would be: simple distribution of dividends; nevertheless dividends will still be subject to taxation. It should be noted that from the next year the personal income tax rate on dividends increases to 13%.

However, the law provides for the possibility for CICs to voluntarily recognize themselves residents of the Russian Federation, and thus to be able to enjoy the benefits provided for by the tax legislation of the Russian Federation.

A foreign company may be also transferred into a jurisdiction with a higher effective tax rate, thus exempting from taxation the CIC profit.

If it becomes obvious that doing business through foreign organization is not feasible, a possible solution to be considered may be liquidation of the foreign company before 1 January 2017, taking into account the benefits applicable in the transition period.

Of course, this list of possible solutions is far from being exhaustive, and it is clear that, over time, increasingly sophisticated methods of tax optimization more or less aggressive appear, but still we have to remember that tax authorities will also improve their methods and possibly some solutions will be only temporary in their nature. A

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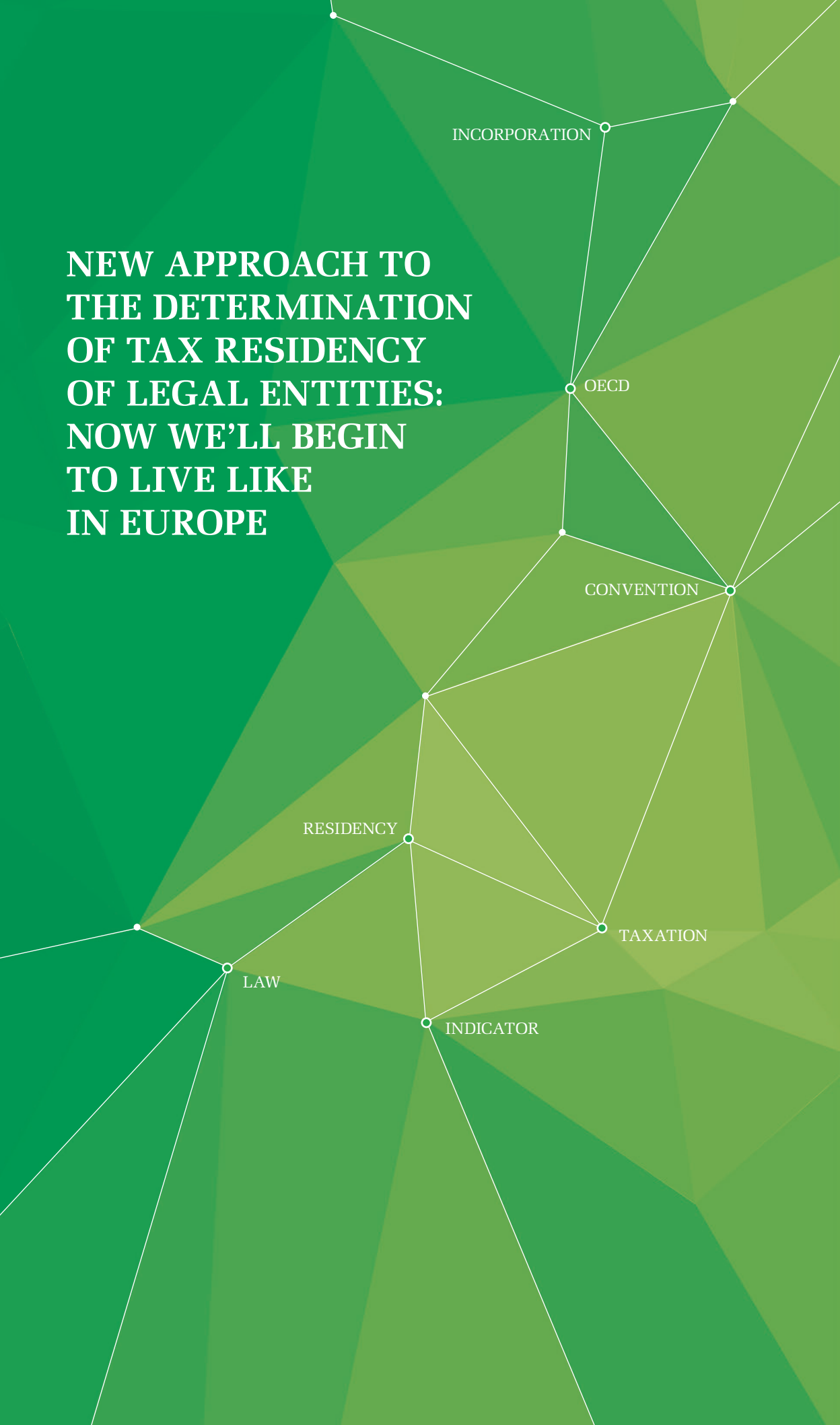
NEW APPROACH TO THE DETERMINATION OF TAX RESIDENCY OF LEGAL ENTITIES: NOW WE'LL BEGIN TO LIVE LIKE IN EUROPE



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At present, almost all countries over the world are involved in globalization. The gradual international division of labor and its deepening, opening of borders of different countries for sales and capital turnovers, emergence of new communication and transport means — all of these became reasons for the emergence of the phenomenon of globalization. There are a number of factors proving that companies indeed have many benefits from a single global strategy. However, the development of such a strategy is a very difficult and lengthy process during which many factors shall be taken into account, such as legislation of countries in which business is done.

Taking into account the current economic situation it is difficult to overestimate the importance of such institution as tax residency, which is the cornerstone of corporate taxation. At the same time, the risks of claims of tax authorities on this matter shall be noted.

So far, in the Russian law tax residency of a legal entity was determined either by the place of its state registration (incorporation), or by availability of permanent establishment of the entity. This is also true for foreign companies recognized tax residents of the Russian Federation only if they operate through a permanent establishment.

SO FAR, IN THE RUSSIAN LAW TAX RESIDENCY OF A LEGAL ENTITY WAS DETERMINED EITHER BY THE PLACE OF ITS STATE REGISTRATION (INCORPORATION), OR BY AVAILABILITY OF PERMANENT ESTABLISHMENT OF THE ENTITY

However, the above approach to the determination of tax residency undergone a significant change due to the new law on controlled foreign

1. Point 3 of article 4 of the Agreement between the Government of the RF and the Government of the Republic of Armenia from 28.12.1996 "On avoidance of double taxation of income and property".

companies adopted at the end of 2014 and effective from 1 January 2015.

The authors of this law offer a new approach, which exists in a number of European countries, where the place of the effective management of the organization also affects its tax residency.

We can not say that the determination of residency subject to the place of effective management is something new. There are many countries over the world, where this criterion is already used, primarily these are common law countries, in which, in fact, it appeared in the late XIX century, as well as the countries where similar criteria are used (for example, in Germany or Belgium this criteria is the location of the head office). By the end of XX century the place of the effective management became a so common residency indicator that it was included in the OECD Model Convention and in many double taxation agreements (including those signed by the Russian Federation) as a decisive criterion in the cases where each of the contracting countries consider a legal entity its resident.

PLACE OF THE EFFECTIVE MANAGEMENT BECAME A SO COMMON RESIDENCY INDICATOR THAT IT WAS INCLUDED IN THE OECD MODEL CONVENTION

Hypothetically, the emerging problem of dual residency must be solved with the appropriate international tax agreement. But agreements usually do not describe in too many details how the place of effective management shall be determined. Different countries have different approaches to this issue, and the mutually agreed procedure, which is provided for these cases by agreements, is used by competent authorities (and not in Russia only) rather in exceptional cases.

Meanwhile, the indicators of the place of effective management listed in the law on controlled foreign companies are known to the world practice as well; moreover, they almost literally reproduce the concept of resident under the Tax Agreement between the Russian Federation and Armenia[1].

Following the international experience, we can assume that the main criterion for Russia could be either the place where strategic decisions important and necessary for the company as a whole are made (this function is usually performed by the board of directors or an equivalent body), or rather the place where the current (operational) management of the company is carried out (i. e. the place where usually the chief officials are located and work, or where the head office is located). However, although the idea embodied in the law on controlled foreign organizations is very close to this concept, things are not so simple and obvious as we would like them to be.

In accordance with the law on controlled foreign companies the place of effective management of foreign organization is recognized the Russian Federation provided that at least one of the following conditions applicable to foreign organization and its activity is met:

- the majority of the board meetings (or meetings of other similar body of the organization, except for the executive body) are held in the Russian Federation. The majority of meetings is recognized the relative majority of meetings, that is the situation where the number of meetings held in the Russian Federation is larger than in other states;
- the executive body (executive bodies) of the organization regularly carries out its activity in relation to that organization from the Russian Federation. In this case, regular activity is not recognized the activity carried out in the Russian Federation if its amount is significantly less here than in other country (countries);
- the main (senior) officials of the organization (persons authorized

and responsible for planning, management and control over the activity of the enterprise) work mainly in the form of a governing management of such foreign organization in the Russian Federation. The governing management of the organization is recognized decision making and other actions related to the issues of the current activity of the organization falling within the competence of executive governing bodies.

However, despite the above-described closed list of conditions, a foreign company will be recognized a tax resident of the Russian Federation provided it meets at least one of them, as stated in the law, while in another point of the same article the legislator stated that if a foreign organization fails to meet any condition provided for by point 1 and 2 from the list of conditions listed above, or it meets only one of them, the Russian Federation is recognized place of effective management of such foreign organization subject to meeting at least one of the following conditions:

- bookkeeping or managerial accounting of the organization in the Russian Federation;
- record keeping of the organization in the Russian Federation;
- operational management of personnel in the Russian Federation.

Exceptions to the above rule for determination of the country of tax residency will be foreign organizations if their business is carried out using their own qualified personnel and assets in the country (the territory) of their permanent location, which has an international tax agreement with the Russian Federation. In this case, a foreign organization shall confirm the above facts by providing documentary evidence of fulfilment of these conditions.

However, it is not clear whether the foreign organization will be recognized resident of the Russian Federation only due to holding the majority of board meetings in the Russian Federation or additional indicators are needed.

The law also attracts attention to the point that particularly specifies that conduct of the following activity of the foreign organization in the Russian Federation itself can not be regarded as effective management of the foreign organization in the Russian Federation:

- preparation and (or) making decisions on matters falling within the competence of the general meeting of shareholders (members) of the foreign organization;
- preparation for the meeting of the board of directors of the foreign organization;
- implementation in the Russian Federation of particular functions as part of planning and control of activity of the foreign organization. Such functions, in particular, include strategic planning, budgeting, preparation and drafting of the consolidated financial statements, internal audit and internal control, as well as adoption (approval) of standards, methods and (or) policies, which apply to all or a substantial part of subsidiaries of such organization.

The purpose of this point remains a mystery, because the legislator particularly stressed that meeting the conditions specified above *by itself* can not be regarded implementation of effective management of the foreign organization in the Russian Federation, fact which suggests that these indicators may be considered jointly with other conditions, but we find no further confirmation of its assumption.

In such situation, we can only make assumptions as to the logic of the legislator and seek clarifications of the tax authorities.

Thus, going back to the comparative analysis of the national approach to the determination of residency and foreign countries, we can note the following. The approaches used in other countries and those proposed in the law have an important difference: in determining the place of effective management, the legislation of other countries usually relies on one determining indicator,

which, as a rule, is the place of making key decisions important for the whole company (the place of meetings of the board of directors or other main governing body), or the place of the current (operational) management of the company. It means that it is not assumed that residency will be determined at the discretion of the tax authorities and according to any indicator that they will consider crucial in that situation.

IN DETERMINING THE PLACE OF EFFECTIVE MANAGEMENT, THE LEGISLATION OF OTHER COUNTRIES USUALLY RELIES ON ONE DETERMINING INDICATOR

This position is laid down in the tax agreements entered into with Russia as well, many of which determine the place of residency according to the location of the effective governing body (for example, the agreements with the Netherlands, Switzerland, Germany). Some of them contain additional indicators, such as place of taxation of income of shareholders of the company (Convention with France).

This applies to other criteria to an even greater extent: bookkeeping, storage of archive and print documents of the company, citizenship, place of residence of members of the board of directors, location of the main business operations — all these circumstances, of course, are important, but they are never determinative. Anyway, the decision on the residency is made following the evaluation of all facts, rather than of a single criterion, the more such a secondary one like storage of archive or bookkeeping. Even if the above-mentioned Agreement with Armenia lists the same indicators of residency, it nevertheless states that they "will be taken into account among others."

According to the comments to p. 3 art. 4 of the Model Convention (which Russian law enforcers increasingly refer to), it is expected that for the residency to be determined the competent authorities will consider the most various indicators. In this case, "the countries that believe that the competent authorities should not be given a free hand... can complete the provision with a reference to the factors they consider relevant." As we can see, the position of the OECD is that residency shall be determined on the basis of the analysis of various circumstances and, if necessary, the circumstances, which particularly should be taken into account, can be pointed out.

The law provides a voluntary procedure for the recognition of the country of tax residency the Russian Federation for the following foreign organizations:

- the foreign organization has a permanent location in the country, with which the Russian Federation has a current international tax agreement, and is recognized tax resident of that foreign country in accordance with the provisions established by the specified international agreement;
- the main activity of the foreign organization is involvement in projects under production sharing agreements, concession agreements, license agreements or service agreements (contracts) on the conditions of risk or under other similar agreements with the government of the relevant country (territory) or with institutions (public authorities, state-owned companies) authorized by such government;
- the foreign organization, the direct (indirect) shareholder (member) of which is a Russian controlling person, the share of direct (indirect) participation of which in the authorized (joint) capital (fund) of such foreign organization makes up at least 50% for at least 365 calendar days, while meeting all of the following conditions:
    1. According to the financial statements over 50% of the assets of such foreign organization

consist of investments in foreign subsidiaries, which are not tax residents of the Russian Federation, and the country or the territory of permanent location of which is not included in the list of countries and territories, approved by the Ministry of Finance of the Russian Federation;

2. The share of participation of such foreign organization in the authorized (joint) capital (fund) of such subsidiaries makes up at least 50%;
3. The income (profit) of such foreign organization lacks or over 95% thereof is income referred to in sub-point 1 of point 4 of article 3091 of this Code and is directly or indirectly derived from such subsidiaries.

- the foreign organization is the operator of the new offshore raw hydrocarbon deposit or direct shareholder (member) of the operator of the new offshore raw hydrocarbon deposit.

It should be also noted that if the foreign organization independently recognized itself tax resident of the Russian Federation, the said foreign organization is not recognized controlled foreign company.

At the same time, the organization, which previously voluntarily recognized itself tax resident of the Russian Federation, may refuse the status of tax resident of the Russian Federation.

This foreign organization shall notify the tax authority at the place of tax registration of the separate division about its recognition as a tax resident of the Russian Federation, as well as about the rejection of the status of tax resident of the Russian Federation as determined by the Ministry of Finance of the Russian Federation, in the form approved by the federal executive body authorized to perform control and supervision of taxes and fees.

It wouldn't go amiss to draw attention to the fact that the recognition of the organization (individual), which is the managing company (managing partner or other entity managing the fund resources) of an investment fund (mutual fund or other form of implementation of collective investments) — a foreign organization (foreign entity without legal personality), tax resident of the Russian Federation is not itself grounds for recognition of this investment fund (mutual fund or other form of implementation of collective investments) a tax resident of the Russian Federation.

The legislator also stated separately that a foreign organization issuing marketable bonds, an organization authorized to receive interest income payable on outstanding bonds, or an organization, to which rights and obligations on bonds issued by other foreign organizations were ceded, can not be tax residents of the Russian Federation. However the share of this income for the period, for which, financial statements for the fiscal year are prepared in accordance with the personal law of the foreign organization, makes up at least 90% of all income of such organization for the specified period.

As can be seen from the analysis of changes of the procedure for determination of tax residency of foreign companies, although the aim of the legislator was obviously bringing the domestic tax legislation close to international standards, there are still many unsolved issues that, we hope, will be solved in the near future.

INTERNATIONAL MUTUAL ASSISTANCE IN TAX MATTERS: A HELPING HAND OR A NOOSE AROUND NECK

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In the wake of the financial crisis plaguing the world economy, countries came to the conclusion that new sources of income shall be opened as soon as possible, thus they focused their efforts on taxation, in particular on fighting against use of schemes of tax evasion. One of the critical elements of success in achieving the above goal is the ability of country to obtain information about taxpayers operating abroad.

ONE OF THE CRITICAL ELEMENTS OF SUCCESS IN ACHIEVING THE ABOVE GOAL IS THE ABILITY OF COUNTRY TO OBTAIN INFORMATION ABOUT TAXPAYERS OPERATING ABROAD

One of the most common forms of international administrative cooperation in tax matters aimed at combating tax evasion and avoiding double taxation, which peaked at present, is exchange of information between foreign tax administrations.

The exchange of information is provided for by most double tax agreements (conventions) and is subject to the provisions of art. 26 of the Model Convention of the Organization for Economic Cooperation and Development related to taxes on income and capital and the UN Model Convention for the avoidance of double taxation between developed and developing countries. However, there are several legal instruments governing the exchange of information:

- double tax agreements (conventions) on taxes on income and capital;
- multilateral or bilateral agreements on exchange of information;
- bilateral agreements on mutual assistance;
- the Council Directive 2011/16/EC of 15.02.2011 on administrative cooperation in the field of taxation;
- the Joint Convention of the Council of Europe and the OECD on mutual administrative assistance in tax matters;
- the Nordic Convention on mutual administrative assistance in tax matters;

- the EU Directive on the taxation of savings.

CURRENTLY THE EXCHANGE OF INFORMATION ON ACTIVITY OF TAXPAYER IN DIFFERENT JURISDICTIONS IS BECOMING A NORM AMID GROWING NUMBER OF JOINT TAX AUDITS

The exchange of information is based on four basic principles that are recommended by the OECD and other international organizations. These principles are:

- the principle of "foreseeable relevance" — this principle clarifies to the countries-partners under agreement that the parties have no right to request information that is not relevant to the tax affairs of the audited taxpayer;
- the principle of "no fishing expedition" — the competent tax authorities may request from the country-partner under agreement information concerning a particular taxpayer for the period covered by the tax audit and does not go beyond of a particular alleged tax offence;
- the principle of confidentiality — any information that a foreign country receives from its partner under agreement, shall be considered confidential and shall have a proper protection regime. Any information obtained may be provided only to "persons or authorities" (including courts and administrative bodies) related to the determination, collection, enforcement or execution of decisions on taxes";
- the principle of reciprocity — the base of the principle of reciprocity is the fact that the country that received information in response to a request sent earlier, upon receipt of such a request shall also provide the relevant information.

Currently the exchange of information on activity of taxpayer in different jurisdictions is becoming a norm amid growing number of joint tax audits, the main participants of which are the US Internal Revenue Service, the Inland Revenue Offices of the UK and Australia, the tax police of Canada. The objectives of the international tax exchange are the following:

- Addressing the negative effects of international double taxation for fiscal interests of the country.
- Prevention of conflicts between different national tax systems due to harmonization thereof.
- Increasing international commercial activity, increasing capital flows between countries.
- Development of a uniform conceptual apparatus, criteria of income origin and residency in the area of international taxation.
- Combating tax evasion in the international economic activity, ensuring tax sovereignty through the exchange of information between tax authorities.

At the international level over 800 international agreements on the exchange of information between tax authorities were signed and are regularly used. In 2011, after the G20 summit in Cannes, seven countries — Argentina, Colombia, Costa Rica, Ghana, Greece, India and Tunisia — signed an international tax agreement in the framework of the Organization for Economic Cooperation and Development. According to the data of early 2013, 37 countries joined this agreement.

In November 2011, participants to the sixth meeting of heads of state and governments "Big Twenty" held in Cannes actively discussed the issue of combating the international practice of tax evasion, where new methods of fighting against it were adopted. On 3 November 2011 representatives

of Argentina, Australia, Brazil, Canada, China, Germany, India, Indonesia, Japan, Turkey, Saudi Arabia, SAR and Russia signed the text of the International Convention on Mutual Administrative Assistance in Tax Matters as developed by the Council of Europe and the Organisation for Economic Cooperation and Development.

THE MAIN PURPOSE OF THE DOCUMENT IS TO DEFINE THE CORE SET OF PRINCIPLES UNDERLYING THE FURTHER INTERNATIONAL COOPERATION IN THE FIGHT AGAINST TAX FRAUD

The main purpose of the document is to define the core set of principles underlying the further international cooperation in the fight against tax fraud. Under the Convention the states-parties shall assume extended obligations on the exchange of tax information and shall establish mechanisms for joint conduct of tax audits, investigations, they are required to actively assist foreign partners in returning assets and capital hidden from national tax services.

In May 2012, the Organization for Economic Cooperation and Development came up with a new project "Tax Inspectors Without Borders" aimed at helping developing countries to improve their tax systems and efficiency of the fight against evasion from mandatory payments.

On 12 February 2013 the Organisation for Economic Cooperation and Development published the report on Base Erosion and Profits Shifting. This document covers the regulation of the global tax system and combating tax evasion. The basic idea is that adoption of modern international taxation standards remains behind the changes occurring in the multinational business and e-commerce development. The authors of the report proposed to develop a set of measures to eliminate uncertainty in the global tax system with non-members of the Organization for Economic Cooperation and Development, and the business community.

It should be noted that recently the initiative of the Russian Ministry of Finance to improve the international exchange of information by signing bilateral agreements on the exchange of information with "low-tax" jurisdiction and the ratification by the RF of the multilateral Convention on Mutual Administrative Assistance in tax matters is actively discussed. This document was signed by our country back in 2011 and allows using in the future the automatic exchange of information with over 50 countries.

As for the bilateral agreements on the exchange of tax information, such agreements are signed in accordance with the model agreement approved by the Organization for Economic Cooperation and Development within the Global Forum on tax transparency.

The Global Forum, the membership of which is comprised of 121 countries, including many offshore zones, is the leading international body implementing the internationally agreed standards of transparency and exchange of information in the tax area. This is the continuation of the work started in the 2000s within the framework of the Organization for Economic Cooperation and Development. The Organization was reorganized in September 2009 in response to the call of G20 to strengthen international standards. In February 2014, the Organization for Economic Cooperation and Development presented at the Global Forum a new uniform standard for automatic exchange of information between tax authorities around the world.

At the EU level, the European Commission also seeks to establish a Europe-wide taxation information exchange system. Initiators thereof are the United Kingdom, Germany, France and Spain. In the latter two countries pilot tests are already performed.

According to the European Commission President Jose Manuel Barroso, the information exchange system shall be created in the foreseeable future.

The implementation of the automatic exchange of information at all levels will contribute to the elimination of the institution of offshore jurisdictions in terms of avoidance schemes, rather than minimization of taxation. Consequently, the number of the most common schemes of profit shifting will decrease.

THE IMPLEMENTATION OF THE AUTOMATIC EXCHANGE OF INFORMATION AT ALL LEVELS WILL CONTRIBUTE TO THE ELIMINATION OF THE INSTITUTION OF OFFSHORE JURISDICTIONS IN TERMS OF AVOIDANCE SCHEMES, RATHER THAN MINIMIZATION OF TAXATION

It is quite possible to expect tighter tax administration in Switzerland, Liechtenstein, Monaco, Andorra and San Marino. In this case, a compromise may be preservation of relatively low tax rates in these jurisdictions in exchange for greater transparency of the banking system and international transactions.

In the near future the European Commission may take the initiative for the countries outside the EU to be required to join any international agreement, other documents on tax administration standards. This will be a problem both for non-European offshore jurisdictions, as well as for ordinary trading counterparties. Particularly serious may be the issue of dependence of trading with a counterparty that is not member of the EU, on the availability of the relevant contract (agreement, etc.) with the country of its jurisdiction.

Today, Russia, as well as most other countries, faces tax evasion using low-tax (offshore) jurisdictions. One of such methods of evasion is consolidation of taxable income in such jurisdictions (offshore companies). In this case, the current international law does not provide for disclosure of information on non-resident income to tax authorities of other countries. However, transactions, as a result of which the income comes under the influence of low-tax jurisdictions, have maximum tax evasion risks.

Nowadays, tax authorities attach great importance to conclusion of agreements on the exchange of information with offshore jurisdictions. This is necessary to improve the efficiency of tax administration.

Annually the Ministry of Finance proposes to consider, and the Government of the Russian Federation approves the main directions of tax policy for the near future. The document itself is not a regulatory act, but it serves a base for bills and draft by-laws implementing government policy on taxes and duties. The Ministry of Finance posts on its website the Main Directions of Tax Policy for 2015 and the planning period for 2016 and 2017 as approved by the Russian Government on 01 July 2014. Here, on the website of financiers, the Government Resolution of 14 August 2014 No. 805 “On conclusion of agreements on the exchange of information on tax matters” is already available. All these documents are interrelated, and are based on the state tax policy.

The August RF Government Resolution No. 805 was developed by the Ministry of Finance pursuant to the instructions of the Government on the basis of a model agreement of the Organization for Economic Cooperation and Development. This Resolution of the Government will help increasing the transparency of financial flows between Russian tax residents and offshore zones. The document approved as a basis for further negotiations a Model

intergovernmental agreement on the exchange of information on tax matters.

As part of the main directions of tax policy and the course of the authorities to deoffshorization of economy, Russia intends to hold negotiations with all offshore zones and low-tax jurisdictions to enter into intergovernmental agreements on the exchange of tax information to combat tax avoidance schemes. According to the estimates of the Ministry of Finance annually about 50 billion US dollars flows out from Russia to Cyprus and Netherlands only. About half of this amount is income that belongs to the Russian tax residents.

RESOLUTION OF THE GOVERNMENT WILL HELP INCREASING THE TRANSPARENCY OF FINANCIAL FLOWS BETWEEN RUSSIAN TAX RESIDENTS AND OFFSHORE ZONES

According to the Model Agreement the main tool that the FTS of Russia will be able to use on the basis of signed agreements, is sending request for information on tax dispute directly to the fiscal agency of the offshore zone, which will have to provide information to the FTS of Russia to the extent allowed by the current legislation.

Sending a request the FTS of Russia may expect to receive information not only on the owners of companies making transactions using offshore zones, but also about their entire chain. For example, as for trusts, information about their founders, trustees and beneficiaries would be obtained, and as for funds — information on their founders, members of the board of trustees and beneficiaries.

In the case of a signed agreement the party receiving a request guarantees provision of information held by banks, other financial institutions, nominees, trustees and other similar entities as well. The opposite party will have to submit the requested information no later than 90 days from the date of receipt of the request. This term shall be reduced to 60 days if the requesting party already has the necessary information.

To obtain tax information, the requesting party shall confirm that the request is based on all statutory reasons. In particular, the tax authorities will be required to report to the party the purpose of the request, information about the inspected person and specify the period for which the information is requested. In addition, they will have to explain why they believe that the required information is namely in this state, and confirm that in their country they used all possibilities to obtain it, except for those that will entail disparate difficulties.

Nevertheless, even if an agreement is signed under the approved form, the FTS of Russia does not receive unlimited powers to obtain information from an offshore zone.

The agreement allows not providing information about the activity of public companies, mutual funds or collective investment schemes, “if receipt of such information will result in emergence of disparate problems”.

The agreement allows the party to reject the received request, for example, in cases where information containing trade, business, industrial, commercial, professional or state secret, as well as the secret of relationships between client and lawyer is requested.

However the request can not be rejected, referring only to the fact that the tax claim, which was reason for the request, is disputed.

Another feature of the Model Agreement is the possibility of tax authorities of one country to be present during the inquiry or the audit of documents in another country if they receive the relevant permission from the foreign country, in which the tax audit shall be carried out.

All decisions on tax audit are made by the auditing country. Thus, the officers of the FTS of Russia will be able

to personally attend the appropriate audit measures in the offshore zone.

Agreements are designed to help increasing transparency of financial flows between the Russian tax residents and offshore jurisdictions, to increase efficiency of tax administration.

The FTS of Russia reports on its official website that today a significant part of foreign trading (both exports and imports) is carried out by Russian companies through low-tax jurisdictions. So far, the receipt of the necessary information about residents of low-tax or offshore jurisdictions was limited or impossible.

It is obvious that the Russian Government will soon take steps to conclude agreements under approved model with the governments of offshore zones. In this regard, the companies making transactions through areas with preferential tax regime should take into account the relevant tax risks associated with possible enhanced control of the FTS of Russia.

To avoid the need to ratify each agreement on tax information exchange with offshore zones and low-tax jurisdictions the Russian Ministry of Finance plans to amend the Tax Code of the Russian Federation as to the possibility of participation of representatives of foreign tax authorities in audits in Russia, if it is stipulated by the relevant international agreement.

For the Russian Federation the effective exchange of information in tax matters is a very important and necessary tool to ensure its taxpayers complying with and implementing its tax legislation. Since a growing number of taxpayers are constantly involved in the cross-border activity, and only due to the tax information provided by partners under the double taxation agreements (conventions), the Russian Federation can verify the correctness of implementation by taxpayers of their obligations to pay taxes and fees. A

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? At the moment, taxpayers don't fully understand what evil our CFC law fights against.

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The CFC law is not our invention. It's a trend. And we now move with the time. However, when reading the law one thing is clear: in a first approximation our bill is a usual CFC law. If you look under a magnifying glass, the question: what were the goals of the legislator while adopting the law arises.

Classic CFC rules aim at fighting against tax "deferral", which the taxpayer benefits from, accumulating funds due to foreign companies. Russia, as seems, aims to make a crusade against offshore zones, not so much as against tax havens, but as against opaque jurisdictions that don't disclose information. This means that the goal of our CFC law is to gather information, primarily for the sake of information, and then later to decide what to do with it.

Therefore, it is quite obvious that the main concerns of our taxpayers are not associated with the obligation to pay the tax. The 13% rate is still one of the lowest in the world. Most of the taxpayers are concerned because of the need to disclose information, as well as the consequences of such disclosure.

All of us are sane people and all ask ourselves questions. Therefore, as for the CFC law, all of us ask: what will follow after disclosure of information? Will compliance with the tax laws spill over into violation of the law on money laundering?

? Division of the CFC income into passive and active one is likely to become a stumbling block in disputes with tax authorities, rather than a benefit for taxpayers.

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One of the exemptions of the CFC law had to become the condition that only the profit of active CFCs is not imputed to the income of controlling persons and does not increase their tax base. Now the Tax Code defines this condition as follows: the CFC profit is exempt from taxation if the passive income makes up at most 20% in the total income of such company.

Furthermore, the law reveals the very concept of passive income. In such income, as many experienced taxpayers could assume, the law included dividends, interests, royalties and income received in the event of liquidation, income from transactions with securities, financial instruments, shares in funds, income from sale of real estate, rental and leasing income, income from provision of consulting services and staffing services. As you can see, the exemption is very doubtful.

Firstly, the legislator had a careful approach to the preparation of the list and included in the list of passive income all instruments that are usually used by taxpayers in tax planning.

Secondly, the law declared the operating companies, whose main business is renting, granting rights to software or trading, passive without the right to rehabilitation.

And thirdly, the legislator insured itself and left the list of passive income twice open. According to the law the list may be completed with similar (sub-point 12) and other income (sub-point 13).

We'll see in the near future how widely the tax authorities will interpret these terms.

? Introduction of the new norm on possible confiscation of corporate property (used in the case of tax evasion by means of a controlled foreign company) mean perception by the Russian criminal law of the idea of possibility to bring legal entities to criminal liability.

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Indeed, some professionals call the confiscation of corporate property "quasi-criminal" liability of legal entities. However, it should be noted that similar rules providing for the possibility to confiscate corporate property existed before the adoption of the CIC bill (see, for ex., p. 3 art. 104.1 CC RF, effective since 2006).

At the same time, the new norms still don't describe and don't answer the question about the possibility to bring legal entities to criminal liability, but only expand the list of grounds on which such measures of criminal law influence as confiscation can be applied.

Therefore, in my opinion it is wrong to say that the adoption of this bill will anticipate a new era associated with change in the Russian criminal law approach to the issue of corporate criminal liability.

However, the mere possibility of application to the organization of criminal law measures may be regarded as the first herald of future change of the Russian legislator approach to this issue.

? Contrary to the expectations of taxpayers, the legislator gave up the black and white lists, as well as the development of other elements by which jurisdictions could be sorted. The legislator spread the net wider and everything turned out to be simpler: the law covered all jurisdictions.

Irina Otrokhova
Lawyer
Corporate Services
Korpus Prava (Cyprus)

With the November amendments to the Tax Code of the RF the legislator introduced the concept of controlled foreign company and controlled entities, the procedure for taxation of controlled foreign companies. In the event where a foreign company is recognized controlled company, the retained profit of such company will be taxed in accordance with the Russian legislation (20% or 13%).

Of course, such changes cannot not to affect the residents who prefer to do business abroad. All will be interested in changing the structure of foreign business. But thinking about changes the taxpayer shall be aware that it should not think of replacing a jurisdiction with another one. Replacing Cyprus with Switzerland or Holland does not itself solve the problem. In the current situation, the taxpayer should focus on the profit of foreign company, even if it is recognized controlled one, to be exempt from taxation. In addition, it is worth considering other activities that can help the taxpayer, for example:

- distribution of dividends (at the rate of 13% from 1 January 2015);
- liquidation of company until 1 January 2017;
- controlling persons can become residents of another country;
- recognition of company a tax resident of the Russian Federation;
- change in the share of participation.

In any case, one thing is clear: measures for reorganization of foreign entities are required and the action plan shall be individual for each particular company.

? The problem of relations between concepts of "actual recipient of income", "economic substance" and "real substance" will have its effect. In the light of introduction of these concepts in the Russian legislation, economic entities should be established more carefully and responsibilities should be allocated within the holding.

Yana Karausheva
Legal assistant
Tax and Legal Practice
Korpus Prava (Russia)

Under the Russian legislation the actual recipient of income is a person that actually benefits from income paid and determines its further economic destiny. This can be both individual and legal entity. In the OECD documents, this term is used with a similar meaning. The term "economic substance" is used by the OECD to designate the set of facts and circumstances that shall to be analyzed in order to identify the real meaning of a business transaction. In the Russian legislation this concept is not used yet.

The concept of "real substance" in the world practice means a complex of different factors that together prove the genuineness of company's transactions that have real economic value, as well as the fact that the activity of the company does not have the main purpose of obtaining tax benefits. The change of the concept of tax residency introduces some elements of "real substance" in the Russian legislation. Due to amendment of the Tax Code each entity of the holding will have to prove its economic viability and the actual right to receive income, as otherwise it will not be able to take advantage of international double taxation agreements.

To prove the actual right to receive income each company of holding should be empowered to dispose of the assets and make other business decisions. The risks associated with making such decisions, also distinguish the actual recipient from the nominal recipient of income. In other words, the company have to prove its real economic activity.

? Prospects in the international exchange of information - real prospects or exchange of promises.

Anna Senchenko
Lawyer
Tax and Legal Practice
Korpus Prava (Russia)

In early 2014, the OECD published the Single Global Standard for the automatic exchange of information on taxpayers' income, which consists of the Model Agreement and the Common Reporting Standard. The Single Global Standard was developed for the Big Twenty and is based on the agreement with the USA (FATCA). In this connection, the countries will annually and automatically receive information about foreign income of their residents (legal entities and individuals).

In this case, sanctions will not impede automatic exchange under existing bilateral agreements. The Russian Federation also plans to join the Model Convention and become a member of the OECD, as well as to approve the Single Global Standard for the exchange of tax information. However, given the current political situation related to Ukraine and imposed sanctions the negotiations on this matter are somewhat delayed.

Nevertheless, despite the fact that Russia does not yet have any available bilateral agreements on the exchange of tax information with some jurisdictions, their conclusion is planned in the future. In this case, the automatic procedure of exchange is possible both on the basis of the already existing double tax agreements, as well as future bilateral agreements.

? There is an opinion that the law provided for only exemption from tax liability (fine) in the transition period and nobody is going to provide exemption from criminal liability.

Leonid Kunin
Senior Lawyer
Tax and Legal Practice
Korpus Prava (Russia)

Why not? The acts related to default or partial payment of the tax due to failure to include in the tax base in the years 2015–2017 the profit of controlled foreign companies, are not reason for making the taxpayer criminally liable if the damage caused to the budget system of the Russian Federation as a result of the offence is compensated in full (p. 4. art. 3 of the Federal Law of 24.11.2014 N 376-FZ.

In addition, a person who committed a crime for the first time in the form of tax evasion, including by failure to include in the tax base the profit of controlled foreign company is exempt from criminal liable if that person or organization paid in full the arrears and related penalties, as well as the fine in the amount determined in accordance with the Tax Code of the Russian Federation (p. 2. Notes to art. 199 CC RF).

This exemption applies in any case, rather then during the transition period only.

? Does it make sense to make a controlled foreign company tax resident of the Russian Federation under the new rules for determination of residency of legal entities?

Tatiana Frolova
Lawyer
Korpus Prava Private Wealth

This solution may be attractive to controlling persons that don't want to file a notice of their participation in a foreign company, as well as provide additional statements.

The benefits of residency of a foreign company is that the activity of the company is governed by foreign law, the possibility to consider disputes in international arbitration is maintained, in making M&A transactions flexible institutions of the English law can be used, while from a taxation perspective these are investments in a company that is a tax resident of the Russian Federation, which makes it possible to apply a 0% rate of taxation of dividends payable by the Russian company.

It should be remembered that the 0% rate may be applied upon distribution of dividends, if the foreign organization that pays dividends has a permanent location in the country, which is not included in the list of countries and territories as approved by the Ministry of Finance of the Russian Federation that provide preferential tax treatment and (or) don't provide for the disclosure and provision of information in making financial transactions (offshore zones).

? From 22 October 2014 investigators are granted the right to initiate criminal proceedings on tax evasion and failure of a tax agent to perform the obligations prior to receipt of the corresponding opinion of the tax authority.

Olga Kuramshina
Leading Lawyer
Tax and Legal Practice
Korpus Prava (Russia)

The norm in force since 2012, which limited the investigator in making decisions on initiation of criminal proceedings, was then a novelty for the Russian law and by itself was weakly consistent with the general spirit of the criminal procedure legislation.

It was rather an ace in the sleeve of entrepreneurs gifted them by the President Dmitry Medvedev, who limited the possibility of law enforcement authorities to initiate criminal proceedings for three types of crimes: evasion from taxes levied on individuals and legal entities, failure to perform the obligations of tax agent and concealment of funds or property due to which taxes and (or) duties should be collected under the Articles 198, 199, 199.1 and 199.2 of the Criminal Code of the Russian Federation.

Initiation of criminal proceedings on the basis of elements of these offences was possible only and exclusively if the of offence was previously found by tax authority under point 1.1 of art. 140 of the Criminal Procedure Code of the Russian Federation, as amended by the Federal law No. 407-FZ of 06 December 2011.

Now this benefit is cancelled, and the composition of the reasons for initiation of criminal proceedings returned to its former state.

What does this mean? I dare to assume that this change firstly is another and obvious example of "crackdown" and return to law enforcement bodies of almost comprehensive rights at the pre-trial stage, and secondly, as strange as it may sound, — an indicator of observance of the principle of separation of powers.

The first circumstance needs no comment: an additional barrier to making by the investigator of the decision on initiation of criminal proceedings is removed again, the excess element of control is eliminated, and the investigator in the evaluation of elements of an offence is not bound by the opinion of the tax authority any more.

As for the second one, (this position is close firstly to theorists of law) involvement of the executive authority — tax inspectorate — in administration of justice, even at the stage of initiation of criminal proceedings, means mixing of these two branches, which led to another strengthening of positions of the executive power in Russia.

In spite of everything, the fact remains and the investigator may initiate criminal proceedings related to tax offences.

The position of the tax authority on the issue of availability of grounds for opening of a criminal case will be considered as evidence on a par with the opinions of other professionals and the results of the examinations.

CORPORATE LAW REFORM

Aleksey Oskin
Senior Lawyer
Tax and Legal Practice
Korpus Prava (Russia)

The past year 2014 is best remembered for its succession of important and significant changes that affected the foundations of the Russian civil law.

The adopted innovations did not come by the part of the civil law, which regulates corporate relations as well. We propose to consider the more important of them.

Organizational and Legal Form of Legal Entities

The new edition of the Civil Code of the RF lays down a different approach to the classification of organizational and legal forms of legal entities. So, all legal entities (such as non-profit and commercial ones) are now divided into corporations and unitary entities.

Corporations are organizations the members of which have the right to participate in them and constitute the supreme governing body. The organizations, whose founders do not become members and do not acquire membership rights, are unitary entities. As for the corporations the law provides for uniform rules of management and rights of members. No similar norms in respect of unitary organizations are provided for.

The list of organizational and legal forms of organizations itself did not change significantly. Nevertheless there are some changes. So, the additional liability company (ALC) and the closed joint stock company (CJSC) are excluded from the possible forms of economic activity. In addition, a new organizational and legal form of a non-profit organization is created — real estate owner association, which means association of real estate owners created for joint possession, use and disposal within the established limits of the jointly owned (used) real estate, as well as for achievement of other purposes.

ALL LEGAL ENTITIES (SUCH AS NON-PROFIT AND COMMERCIAL ONES) ARE NOW DIVIDED INTO CORPORATIONS AND UNITARY ENTITIES

Schematically, the new classification of legal entities can be represented in the diagram below.

Business Partnerships and Companies

Business partnerships and companies are commercial organizations with authorized (contributed) capital divided into stakes (contributions) of founders (members).

The innovations divided business companies into public and non-public ones. Public companies are joint-stock companies the shares of which are

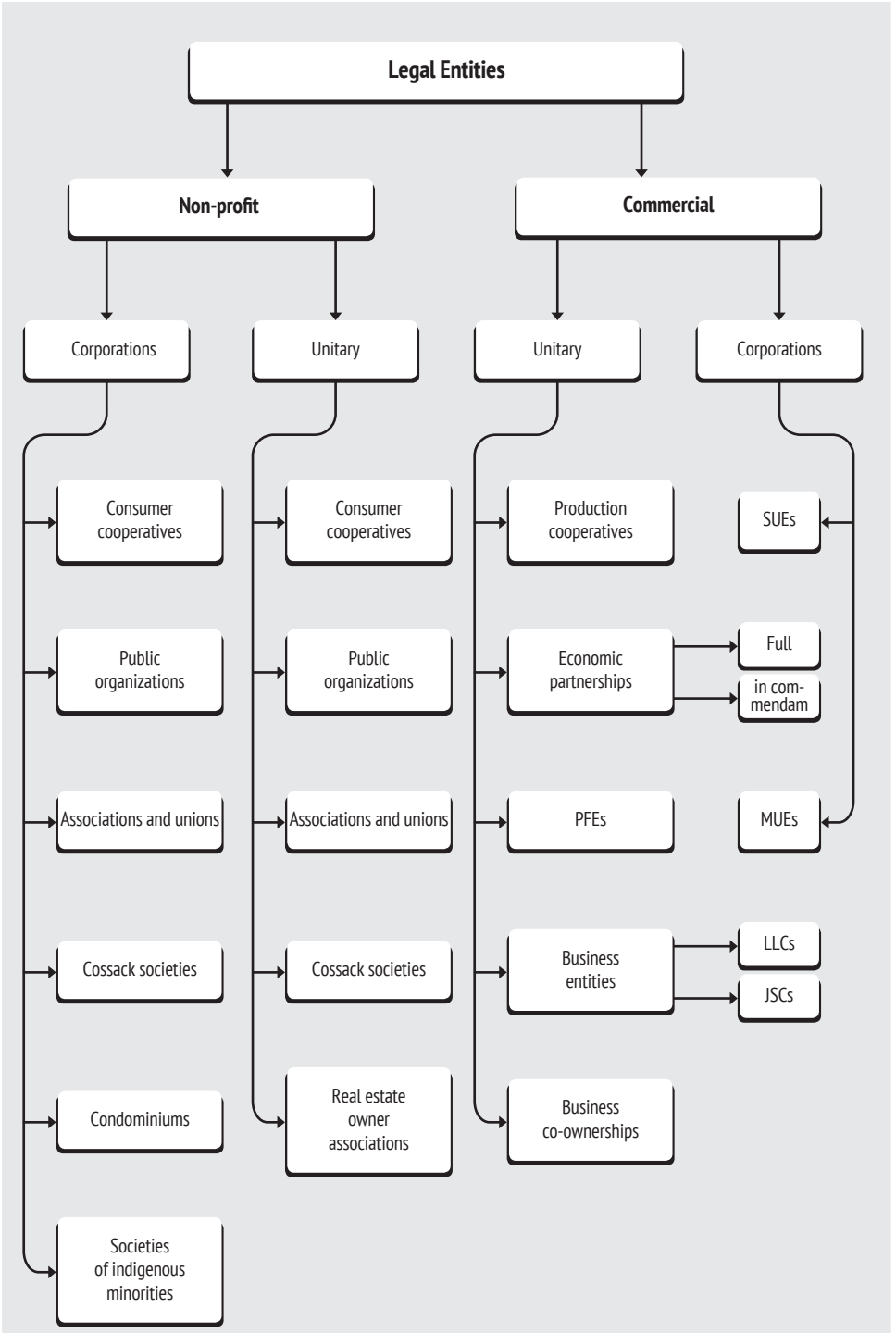


Diagram 1. Classification of types of legal entities.

publicly placed or publicly listed as provided for by the law on securities market. The provisions on public companies also apply to joint-stock companies, the articles of association and the corporate name of which contain an indication on the public nature of the company. Non-public companies are limited liability companies and joint stock companies that do not meet the requirements of publicity.

DIVIDED BUSINESS COMPANIES INTO PUBLIC AND NON-PUBLIC ONES

An important innovation is also the provision of the possibility to determine the amount of powers of non-public business company not only in proportion to the stakes in the authorized capital, but also under other rules, if it is provided by the articles of association of the company or the corporate agreement. In this case, information on corporate agreement and on the amount of powers of members of the company provided for by it will be recorded in the USRLE.

Besides, now if members of a company make non-cash contributions to the authorized capital, the value of such contributions shall be determined only by the appraiser. The value of the non-cash contribution determined by members can not be higher than the value estimated by an independent appraiser.

Also the rules of payment of the authorized capital upon establishment of a business entity changed — under the common rule founders of a company are required to pay at least ¾ of its authorized capital prior to the state registration of such company. The remaining part must be paid within the first year of operation of the company. Other rules may be provided by law. In this case, if the law permits registration of a company without prepayment of ¾ of the authorized capital, the company's members are jointly liable for its obligations arising prior to the full payment of the authorized capital.

Now the Civil Code also contains provisions on the procedure for conclusion of corporate agreements, determining their contents and form. Thus, (all or some) members of the business company may enter into an agreement on exercise of corporate rights, according to which they undertake to exercise these rights as provided for or shall abstain from their implementation. The corporate agreement shall be concluded in writing by drawing up a document to be signed by the parties. The members shall notify the company about conclusion of such agreement (not being required to disclose its contents). If a corporate agreement was signed by all members of the company, its violation may be considered grounds for invalidation of the decisions of the body of the business company by means of suit of a member.

FOR THE GENERAL MEETING OF MEMBERS OF A LIMITED LIABILITY COMPANY TO MAKE A DECISION, SUCH DECISION MUST BE NOTARIZED

Also now for the general meeting of members of a limited liability company to make a decision, such decision must be notarized (if a different way — including signing of minutes by all members or by some of them; using technical means allowing reliably establish the fact of making decision; another way, which is not contrary to the law) is not provided for by the articles of association or by the decision of the general meeting of members of the company adopted by members of the company unanimously.

Responsibility of Controlling Persons

The persons authorized to act on behalf of a legal entity, as well as the members of the collective management body are obliged to act reasonably and in good

faith. Should this obligation be violated, the said persons are obliged to reimburse the company the losses incurred as claimed by the company or its members. Any agreement on the limitation of such liability is void.

Furthermore, another person who has effective power to determine the actions of the legal entity, including the ability to give instructions to the members of the governing bodies, is also liable for losses caused by that legal entity).

Constituent Documents of Legal Entities

Under the common rule, the only constituent document of any organization is its articles of association. However, business companies may also act on the basis of the memorandum of association, which has the same legal force as the articles of association do. Upon registration of legal entities model articles of association, the forms of which are approved by the authorized state body may also be used.

Procedure for Establishment of Legal Entity

The innovations also brought universal rules on making decision to establish a legal entity. Thus, in the event of establishment of a legal entity by two or several founders, the decision to establish shall be made unanimously. The decision in this case shall specify information on the establishment of a legal entity, approval of its articles of association, procedure (amount, terms, methods) of formation of its property, election (appointment) of its bodies.

In making decision to establish a corporate organization (based on membership), such decision shall specify information about the results of the vote of founders on the establishment and on the procedure of joint activity of founders for establishment of a legal entity.

Procedure for Reorganization of Legal Entity

The new rules provide for the possibility to perform a mixed reorganization and simultaneous reorganization of several legal entities.

THE NEW RULES PROVIDE FOR THE POSSIBILITY TO PERFORM A MIXED REORGANIZATION AND SIMULTANEOUS REORGANIZATION OF SEVERAL LEGAL ENTITIES

Mixed reorganization means the possibility to simultaneously combine various forms of reorganization (merger, consolidation, division, separation, transformation). Previously, the possibility of a mixed reorganization was indirectly provided only for joint stock companies; now the law does not stipulate such exception and this rule applies to all legal entities. In addition, it is possible to carry out reorganization involving two or several legal entities, including those created in different organizational and legal forms.

In addition, as a result of the adoption of the new innovations, the regulation of the rights of creditors of the reorganized company significantly changed towards significant improvement of their protection. An important innovation is the introduction of joint liability of the newly established legal entity for the debts of the reorganized entity if the successor can not be determined in case of liability or unfair distribution of assets and liabilities.

It should also be noted that the new law provides for the possibility to invalidate the decision on the reorganization of the legal entity, as well as to declare the reorganization failed. The members of the reorganized entity have the right to seek invalidation of the decision on reorganization and may refer to the court within 3 months from making record in the USRLE on beginning of reorganization.

The invalidation of the decision on reorganization shall not result in liquidation of the newly formed legal

entities and is not a basis for challenging transactions made by these legal entities. The only consequence of invalidation of a decision on reorganization is provision to a member of the reorganized entity, voting against such decision, the right to claim damages from the following persons:

- From individuals who contributed in bad faith to making the decision on reorganization;
- From legal entities formed as a result of reorganization, the decision on which is invalidated.

However, if the reorganization is invalidated, absolutely different consequences will occur, and namely:

- the legal entities that existed prior to the reorganization will be recovered and the existence of entities formed as a result of reorganization will cease simultaneously;
- the transactions of the newly formed legal entities with contractors who relied on succession in good faith, remain in force for recovered legal entities, which are joint debtors and joint creditors in such transactions;
- the transfer of rights and obligations is invalidated, except for the cases where such rights and obligations pass to the new legal entity from debtors that relied in good faith on succession on the part of the creditor;
- the members of the previously existing legal entity are its shareholders to the extent to which the stakes were owned by them prior to the reorganization, and upon change of members of the legal entity in the course of such reorganization, or by its end the stakes of members of the previously existing legal entity are returned to them.

It should be noted that the reorganization may be invalidated only by court, and only at the request of the member that voted against or did not participate in the meeting in making this decision. The reorganization may be invalidated in the following cases:

- If the members did not make a decision on reorganization;
- If the papers submitted for the state registration contained deliberately false information.

Procedure for Liquidation of Legal Entity

The new edition of the Civil Code of the RF specifies the grounds of judicial or extra-judicial liquidation of organizations. Thus, legal entities may be liquidated by a court decision in the following cases:

- in the event of invalidation of the state registration of legal entity, including in connection with the assumptions made upon its establishment with gross violations of law, while such violations are not remediable;
- in the case where the legal entity operates without proper authorization (license) or in the absence of mandatory membership in the SRO or certificate of admission to a particular type of work, issued by the SRO as required by law;
- in the case where the legal entity carries out an activity prohibited by law or with other repeated or gross violations of law or other legal acts;
- in the case of regular implementation by the public organization, a charitable, other foundation and religious organization of an activity contrary to the statutory goals of such organizations;
- in the case of impossibility to achieve the goals for which the legal entity was established, including in the event where the implementation of the activity of such legal entity becomes impossible or significantly difficult;
- in other cases provided by law.

A legal entity may be liquidated extra-judicially by the decision of its founders (members) or the body authorized by the articles of association.

INTELLECTUAL LIFE NEWS

Tatiana Frolova
Lawyer
Korpus Prava Private Wealth

The civil law in Russia gradually evolves under the general roar of probably historically significant events. This also concerns the intellectual property rights: in March 2014 a package of amendments to part 4 of the RF Civil Code was adopted[1]. The importance of intellectual property rights for the civil turnover found expression in establishment of a special Court for Intellectual Property Rights. This Court began its work in July 2013[2]. This article is assumed to give an overview of the results of work of the Court, as well as major legislative amendments and changes of the law enforcement practice in the field of intellectual property over the past year.

For a start let's outline the range of cases falling within the jurisdiction of the Court for Intellectual Property Rights:

1. Cases of challenge of regulatory and legal acts on intellectual property rights;
2. Cases of disputes of granting or termination of legal protection of results of intellectual activity, including:

- challenging non-regulatory legal acts on intellectual property rights;
- challenging decisions of the Federal Antimonopoly Service on recognition unfair the competition of actions related to the acquisition of the exclusive right to the means of individualization;
- identification of the patentee;
- invalidation of the patent for invention, utility model, industrial design or selection invention, decision to grant legal protection to a trademark, appellation of origin of goods;
- early termination of legal protection of a trademark due to its non-use[3];
- cases of disputes of compensation for damage caused by a regulatory or non-regulatory and legal act on intellectual property rights, decisions and actions (inaction)

1. Federal Law from 12.03.2014 No. 35-FZ "On amendments to the first, second and fourth parts of the Civil Code of the Russian Federation and certain legislative acts of the Russian Federation".
2. Information of the RF Supreme Arbitration Court, Court of Intellectual Property Rights from 09.07.2013.
3. Part 4 of article 34 of the RF Code of Arbitration Procedure.

of the Federal Service for Intellectual Property[4].

The aforementioned disputes are considered by the Court regardless of who are participants of the legal relations, which the dispute raised from: organizations, individual entrepreneurs or citizens.

As a cassation instance, the Court for Intellectual Property Rights considers cases it considered in the court of first instance, as well as cases of protection of intellectual rights, considered by arbitration courts of first and appellate instance[5].

The Resolutions of the Presidium of the Court for Intellectual Property Rights are of the greatest interest in terms of development of intellectual property rights. One of the most notable acts adopted by the Court during its operation is the overview of the judicial practice on unfair competition[6].

Acquisition of a trademark as a form of unfair competition

The acquisition of the exclusive right to a means of individualization and its use related to unfair competition is a violation of antitrust laws[7]. This violation may be considered under administrative procedure by the federal antimonopoly authority. However, the Court for Intellectual Property Rights considers it lawful to demand recognition of acquisition of the exclusive right to means of individualization unfair competition directly through the court[8].

By virtue of provisions of the RF Civil Code the judicial recognition of actions of the right holder of a trademark unfair competition or abuse of the right implies the possibility to challenge provision of legal protection to such trademark[9]. The criterion for qualifying actions as both aforementioned violations can be the preceded use of the disputed designation[10]. If before the priority date of the disputed trademark the disputed designation was widely used by third parties, the registration of the trademark by one of the competitors can be carried out only in order to remove third parties from the market of the relevant goods. According to the Court for Intellectual Property Rights, such registration does not meet the basic function of the trademark to individualize the goods of the right holder.

THE REGISTRATION OF THE DESIGNATION PREVIOUSLY USED WITHOUT REGISTRATION AS A TRADEMARK ONLY BY THIRD PARTY AND THAT BECOME KNOWN AS A RESULT OF NAMELY SUCH USE CAN ALSO BE RECOGNIZED UNFAIR COMPETITION

In addition, the registration of the designation previously used without registration as a trademark only by third party and that become known as a result of namely such use can also be recognized unfair competition. In this case, if the right holder registered as a trademark a designation that became known for its economic activity and investments made prior to the

4. Point 10 of the Resolution of the Plenum of the RF Supreme Arbitration Court from 08.10.2012 No. 60 "On some issues arising in connection with the establishment in the system of arbitration courts of the Court of Intellectual Property Rights"
5. Part 3 of article 274 of the RF Code of Arbitration Procedure.
6. Note on abusive behaviour, including competition, acquisition and use of means of individualization of legal entities, goods, services and enterprises, approved by the Resolution of the Presidium of the Court of Intellectual Property Rights from 21.03.2014 No. СП-21/2.
7. Part 2 of article 14 of the Federal Law from 26.07.2006 No. 135- FZ "On Protection of Competition".
8. Part 3 of the Note, approved by the Resolution of the Presidium of the Court of Intellectual Property Rights from 21.03.2014 No. СП-21/2.
9. Sub-point 6 of point 2 of article 1512 of the RF Civil Code.
10. Part 5 of the Note, approved by the Resolution of the Presidium of the Court of Intellectual Property Rights from 21.03.2014 No. СП-21/2.

registration of the trademark, its actions can not be qualified as unfair competition.

Use of a domain name as a form of unfair competition

In March past year, the Court for Intellectual Property Rights generalized the practice of considering domain disputes[11]. The Courts treats domain disputes as disputes of use of domain names that are identical or confusingly similar to trademarks or other means of individualization. Under the common rule, violation of the exclusive right to the trademark is the actual use of similar domain name. However, the mere fact of registering a domain name that is identical or confusingly similar to a well-known trademark, is a violation of the exclusive right to the relevant trademark[12]. If the registration of the domain name is recognized violation of the exclusive right, the court may meet the demand for cancellation of such registration.

The court found that the demand on the illegal use of domain name, expressed in violation of the rights to trademark can be filed against the administrator of the relevant existing domain name. The claim for damages within the domain dispute may be submitted to the administrator of the domain name and the person who actually used the domain name. The administrator of the domain name can not absolve themselves of the responsibility for the violation of the exclusive rights and/or pass it on to another person by entering into a contract, in particular the so-called "domain name lease" contract[13].

The demand to discontinue the use of the domain name may be denied if based on specific factual circumstances such demand may be qualified by the court as an abuse of right. In particular, the abuse of right may be evidenced by the statement of demand to prohibit the use of the domain name in the following situation: the right holder registered as a trademark the designation that previously became widely known due to the person that used this designation in the domain name.

THE ADMINISTRATOR OF THE DOMAIN NAME CAN NOT ABSOLVE THEMSELVES OF THE RESPONSIBILITY FOR THE VIOLATION OF THE EXCLUSIVE RIGHTS AND/OR PASS IT ON TO ANOTHER PERSON BY ENTERING INTO A CONTRACT

As for the domain disputes the Court broadly interprets the concept of unfair competition. The act of unfair competition (as well as abuse of right), which is expressed in the registration and use of domain name that is identical or confusingly similar to a means of individualization, may be allowed by a person that is not direct competitor in the commodity market, as participants of legal relations related to the use of designations in the Internet are persons not involved in business as well[14].

The Court for Intellectual Property Rights confirmed the past practice of application[15] to disputes of domain names that were identical or confusingly similar to trademarks, of the Uniform Dispute Resolution Policy related to domain names (hereinafter the UDRP), approved by the Internet Corporation for Assignment of Names and Numbers

11. Note on issues arisen in considering domain disputes, approved by the Presidium of the Court of Intellectual Property Rights from 28.03.2014 No. SP-21/4
12. Part 1.1. of the Note approved by the Resolution of the Presidium of the Court of Intellectual Property Rights from 28.03.2014 No.СП-21/4.
13. Part 1.2. of the Note approved by the Resolution of the Presidium of the Court of Intellectual Property Rights from 28.03.2014 No.СП-21/4.
14. Part 2 of the Note approved by the Resolution of the Presidium of the Court of Intellectual Property Rights from 28.03.2014 No.СП-21/4.
15. Resolution of the Presidium of the RF Supreme Arbitration Court from 11.11.2008 No. 5560/08.

(ICANN)[16]. In particular, according to the UDRP the cancellation, transfer of registration or the change of the domain name are carried out on the basis of all of the following criteria:

1. The disputed domain name of the defendant is identical or confusingly similar to the trademark of the claimant;
2. The administrator of the domain name (defendant) has no rights to and legitimate interests related to the disputed domain name;
3. The disputed domain name is registered and used by the administrator of domain name (defendant) in bad faith.[17]

The Court for Intellectual Property Rights also settled some of the issues of interim measures within domain disputes[18]. To save the current state of relations (status quo) between the parties to the dispute the Court ordered to the lower courts to prohibit the administrator to perform any actions with the domain name, as well as to prohibit the registrar to cancel the domain name and transfer the rights to administrate the domain name to another person. The Court pointed out that to apply the interim measures it is sufficient for the claimant to provide:

- evidence of their right to the result of intellectual activity or means of individualization;
- evidence of violation of this right;
- justification of the reason for claiming the application of interim measures.

It is important to note that the Court considered it unnecessary to require the parties to the domain dispute to provide specific evidence that the failure to take interim measures may make it difficult or impossible to execute a judicial act in a domain dispute. The Court justified this procedural advantage with high tradability of domain names[19].

Amendments to civil legislation

Besides the practice of law enforcement in the field of intellectual property the past year was marked by a number of amendments to the RF Civil Code in the part governing intellectual rights. Most of them came into force on 1 October 2014[20]. The rules on joint ownership of exclusive rights to results of intellectual activity were improved. Earlier right holders disposed of the exclusive right jointly, and otherwise could only be found only by law[21]. Now the procedure of disposal of this right can be established in the contract of right holders[22]. However, the law does not yet lay down requirements to the form and content of such contract. Therefore, it is unclear whether the provision, for example, that one of the right holders has the power to transfer the right to use the result of intellectual activity to third parties without the consent of the other right holder can be included in the contract. This and other issues of joint ownership of exclusive right, still wait for their solutions.

The right of the right holder to unilaterally repudiate the contract on alienation of the exclusive right is limited. Earlier if the exclusive right to the acquirer has not yet passed, a simple breach of the obligation to pay was enough for unilateral repudiation[23]. Now, if the exclusive right has not yet been transferred to the acquirer, only a material breach of this obligation gives

16. Part 3 of the Note approved by the Resolution of the Presidium of the Court of Intellectual Property Rights from 28.03.2014 No. СИП-21/4.
17. Paragraph 4 (a) of the Uniform Dispute Resolution Policy in connection with domain names approved by the Internet Corporation for Assigned Names and Numbers (ICANN).
18. Note on certain issues related to the procedural order of application of interim measures in domain dispute approved by the Resolution of the Presidium of the Court of Intellectual Property Rights from 15.10.2013 No, СИП-23/3.
19. Part 3 of the Note approved by the Resolution of the Presidium of the Court of Intellectual Property Rights from 15.10.2013 No. СИП-23/3.
20. Point 1 of article 7 of the Federal Law from 12.03.2014 № 35-FZ "On amendments to the first, second and fourth parts of the Civil Code of the Russian Federation and certain legislative acts of the Russian Federation".
21. Point 3 of article 1229 of the RF Civil Code, edition from 23.07.2013.
22. Point 3 of article 1229 of the RF Civil Code in its current edition.
23. Point 5 of article 1234 of the RF Civil Code, edition from 23.07.2013.

the right holder the right to repudiate the contract of alienation[24]. But again, the law does not settle the issue in full: the criteria of materiality of violations are not specified. The contract is terminated after 30 days from the moment of notification of the right holder about the repudiation of the contract: up to the moment where the acquirer can still perform the obligation to pay the fee.

FROM 1 OCTOBER 2014 LICENSE CONTRACTS ON GRANTING THE RIGHT TO USE THE SOFTWARE OR DATABASES CAN BE LAID DOWN IN AN ELECTRONIC FORM

From 1 October 2014 license contracts on granting the right to use the software or databases can be laid down in an electronic form[25]. Earlier conclusion of such contracts was possible in the form of a contract of adhesion, when its conditions were set out on the copy or the package of the software (database) . The law calls the procedure for concluding contracts in electronic form simple. The written form of the contract is considered observed if the user agreed to sign it, i.e. started using the software or the database. The license contract made in electronic form is gratuitous by default, unless the contract provides otherwise . As part of this contract only a simple (non-exclusive) license can be transferred.

An open list of items that are not utility models is made up. This list includes, in particular:

1. Discoveries.
2. Scientific theories and mathematical methods.
3. Decisions on appearance of items only and aimed as meeting the aesthetic needs.
4. Rules and methods of games, intellectual or economic activity.
5. Software.
6. Decisions consisting only in provision of information.
7. Plant varieties, animal breeds and biological processes to obtain them.
8. Topographies of integrated circuits[28].

THE HOLDER OF THE EXCLUSIVE RIGHT TO AN INVENTION, UTILITY MODEL, INDUSTRIAL DESIGN IS ENTITLED TO DEMAND FROM THE VIOLATOR INSTEAD OF COMPENSATION FOR DAMAGES A COMPENSATION

The list of items that are not inventions was similarly changed[29]. The criteria on which basis a result of intellectual activity must be assigned to a category from the list, are not provided for by the law. Earlier the list of items that are not recognized utility models was closed[30] – thus, the powers of Rospatent to assign an item to utility model were extended.

The term of validity of the exclusive right and the design patent was reduced from 15 to 5 years[31]. At the request of the

24. Point 5 of article 1234 of the RF Civil Code in its current edition.
25. Point 5 of article 1286 of the RF Civil Code in its current edition.
26. Point 3 of article 1286 of the RF Civil Code, edition from 23.07.2013.
27. Point 5 of article 1286 of the RF Civil Code in its current edition.
28. Points 5, 6 of article 1351 of the RF Civil Code in its current edition.
29. Point 5 of article 1350 of the RF Civil Code in its current edition.
30. Point 5 of article 1351 of the RF Civil Code, edition from 23.07.2013.
31. Point 1 of article 1361 of the RF Civil Code, edition from 12.03.2014.

patentee, this term can be repeatedly extended for 5 years, but in general it shall not exceed 25 years from filing of the patent application[32]. Under the previous edition of the RF Civil Code, the maximum possible term of protection was also 25 years, but it was formed in a different way: the original term of the exclusive right to industrial design was 15 years able to be extended for another 10 years. Since the beginning of the new year the possibility of extending the term of the exclusive right to the utility model was excluded[33]. Earlier this term could be extended at the request of the right holder for 3 years. These changes apply to the exclusive rights to industrial designs, issued under the applications filed after 1 January 2015[34].

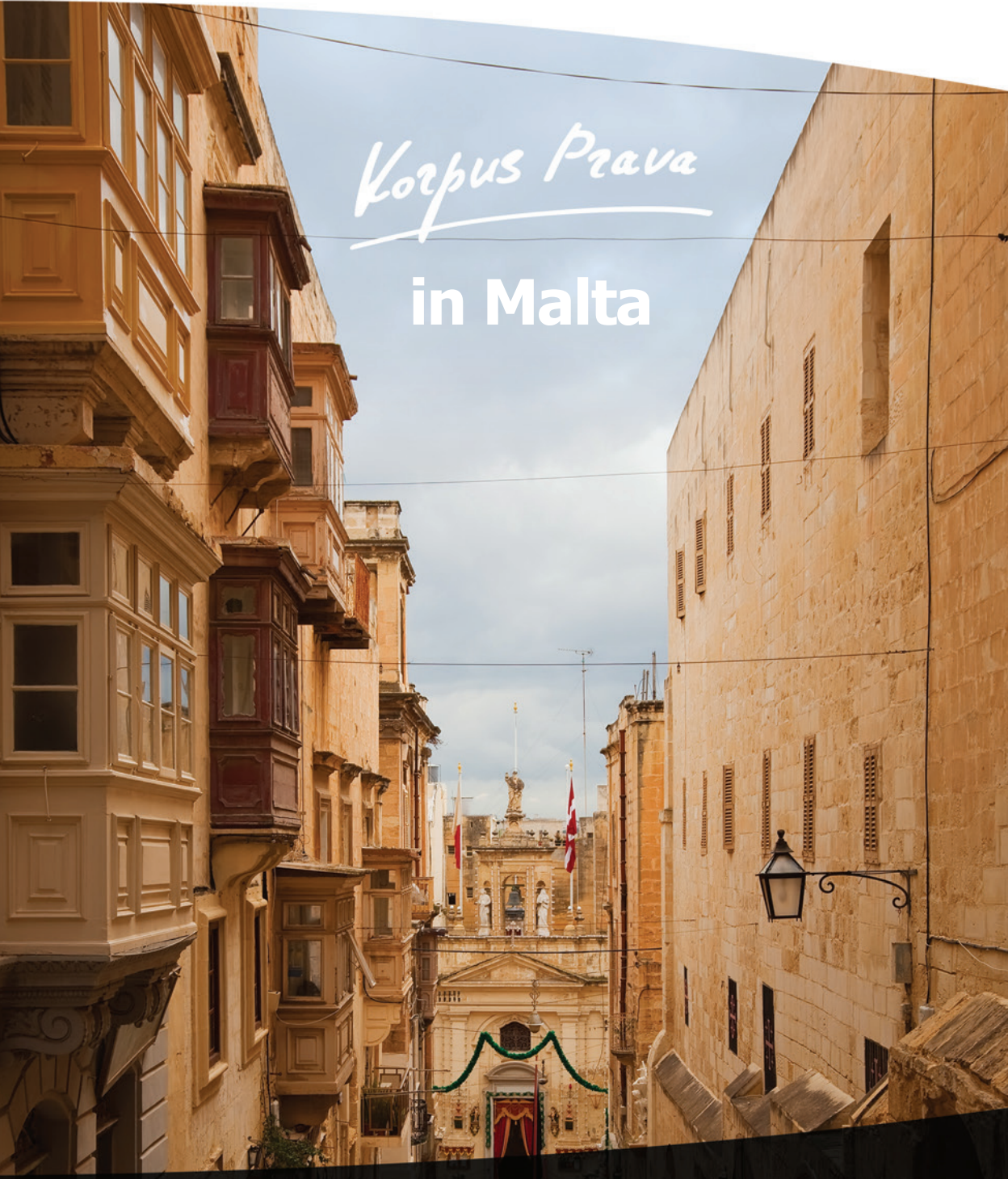
A special rule on liability for violation of the exclusive right to an invention, utility model or industrial design is established[35]. Along with the use of other applicable methods of protection of exclusive rights the holder of the exclusive right to an invention, utility model, industrial design is entitled to demand from the violator instead of compensation for damages a compensation:

1. In the amount of 10 000–5 000 000 rubles determined at the discretion of the court on the basis of the nature of the violation;
2. Two times the cost of the right to use the object of intellectual property, determined based on the price, which under comparable circumstances is usually charged for the use of the same object in a way that was used the violator.

This innovation takes effect on 1 January 2015 and applies to legal relationships arising from the said date.

Intellectual property is the youngest and dynamically developing property item — the evolution of the intellectual property right seems inevitable in this regard. The establishment of the Court for Intellectual Property Rights seems a reasonable and logical step towards creation of an effective legal regulation in the field of intellectual activity.

32. Point 3 of article 1361 of the RF Civil Code, edition from 12.03.2014.
33. Point 3 of article 1361 of the RF Civil Code, edition from 12.03.2014.
34. Point 4 of article 7 of the Federal Law from 12.03.2014 No. 35-ФЗ "On amendments to the first, second and fourth parts of the Civil Code of the Russian Federation and certain legislative acts of the Russian Federation".
35. Article 1406.1 of the RF Civil Code, edition from 12.03.2014.



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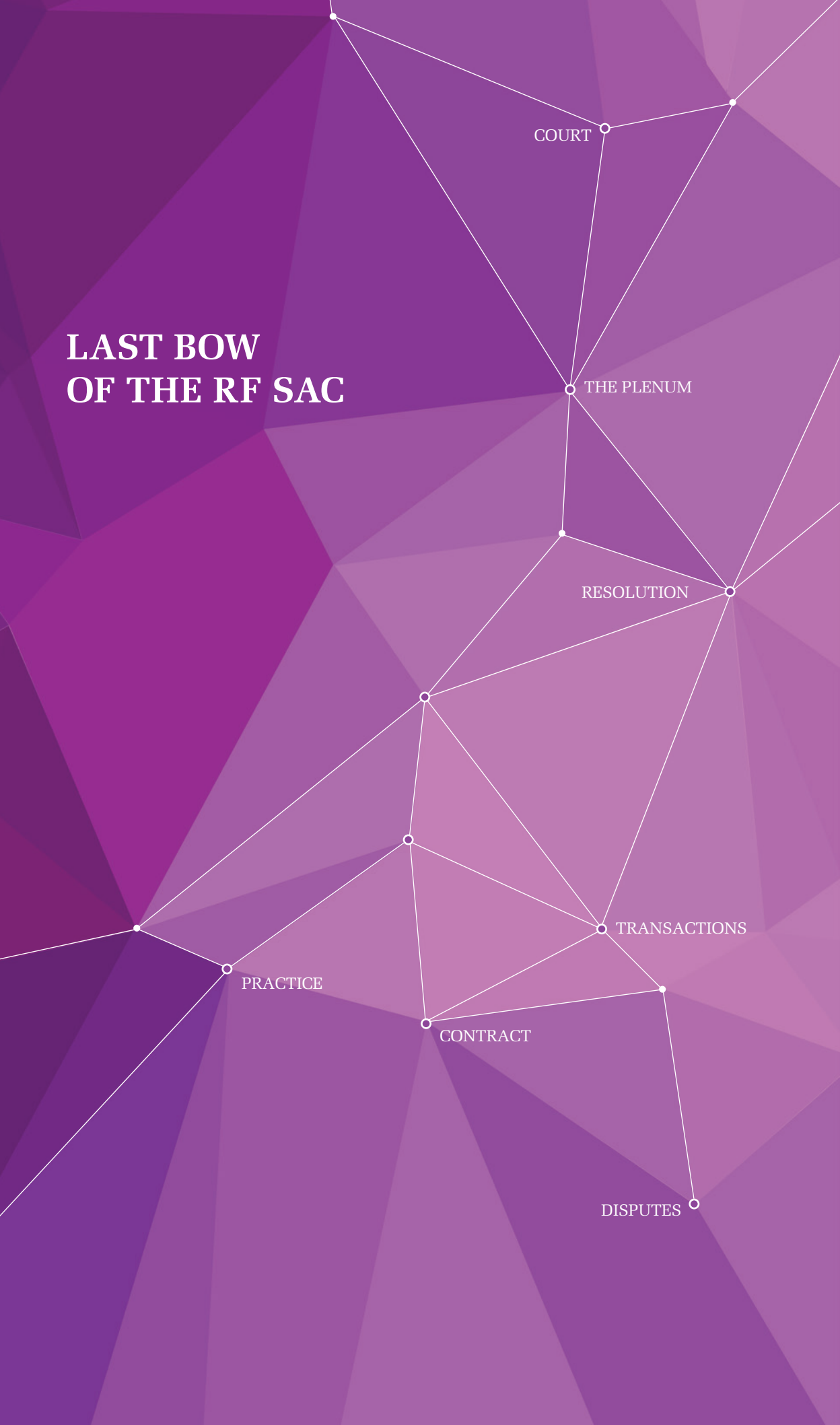
LAST BOW OF THE RF SAC



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Starting to speak about the Resolutions of the Plenum of the RF Supreme Arbitration Court, they should be treated with a special respect, as these are the last Resolutions of the RF SAC. That is not the last in time, but the last in general. From 7 August 2014 the RF SAC ceased to exist. The functions for resolution of economic disputes, earlier falling under the jurisdiction of the RF SAC, are now carried out by the Judicial Panel for Economic Disputes of the RF SC, consisting of 30 judges. The Deputy Chairman of the Supreme Court of the Russian Federation — the chairman of the Judicial Panel for Economic Disputes is Sviridenko Oleg Mikhailovitch (vested with powers by the Resolution of the Federation Council of the Federal Assembly of the Russian Federation from 18 June 2014 No. 230-SF).

We are not going to assess this event, because such a milestone requires understanding and at least a separate article. We'll explain only the main redistributions of powers.

First of all, we shall understand that the supreme court of arbitration justice — the FR SAC is wound up only. Federal arbitration courts of districts (cassation instance), appellate arbitration courts and arbitration courts of the RF subjects so far are kept.

Cases of challenging regulatory legal acts are removed out of the jurisdiction of the arbitration courts. Chapter 23 of the RF APC now governs consideration of the relevant cases by the Court for Intellectual Property Rights only.

WE SHALL UNDERSTAND THAT THE SUPREME COURT OF ARBITRATION JUSTICE — THE FR SAC IS WOUND UP ONLY. FEDERAL ARBITRATION COURTS OF DISTRICTS (CASSATION INSTANCE), APPELLATE ARBITRATION COURTS AND ARBITRATION COURTS OF THE RF SUBJECTS SO FAR ARE KEPT

Cases of challenging the cadastral value are removed out of the jurisdiction of the arbitration courts. These disputes are referred to the courts of general jurisdiction.

The features of cassation and supervisory proceedings in arbitration cases in the RF Supreme Court (hereinafter — the RF SC) are defined. Cassation appeals against the effective decisions of arbitration courts, the Court for Intellectual Property Rights will be considered by the Judicial Panel of the RF SC. The deadline for filing complaint will make up, under the common rule, 2 months from the date of entry into force of the last contested decision.

The grounds for cancellation or change of decisions challenged in cassation proceedings will be significant violations of the rules of substantive law and (or) procedural law that affected the outcome of the case and the failure to address them makes impossible the restoration and protection of the violated rights, freedoms and legitimate interests in the field of entrepreneurial and other economic activity as well as protection of legally protected public interests.

The RF APC is completed with a new chapter 36.1 "Proceedings for review of judicial acts under supervision procedure". Supervisory complaints will be considered by the Presidium of the RF SC. Pursuant to part 3 of art. 308.1 only:

- the effective decisions of the Judicial Panel of the RF SC delivered by the court of first instance (if they were not subject to appellate review);
- the rulings of the Appellate Panel of the RF SC awarded following the consideration of appeals against the decision of the Judicial Panel of the RF SC, delivered by the court of first instance;
- the rulings of the Judicial Panel of the RF SC, delivered in the cassation proceedings.

will be contested under the supervision procedure.

The deadline for submitting supervisory complaints will be 3 months from the date of entry into force of the relevant decisions. Supervisory complaints will be preliminary examined the judge of the RF SC, who will decide on the need to transfer them to the Presidium of the RF SC.

The law entitled the Chairman of the RF SC and his/her deputy to submit to the Presidium of the RF SC the application to review rulings under the supervisory procedure based on the complaint of the persons concerned.

Such application may be submitted in order to eliminate fundamental violations of the rules of law, which affected the legality of challenged rulings and to deprive participants to legal relationships in dispute of the possibility to exercise the rights guaranteed by the RF APC or significantly limited them.

The resolutions of the Presidium of the RF SC will come into force from the date of adoption and are not subject to appeal.

THE EXPLANATIONS OF THE PLENUM OF THE RF SAC ONLY OFFICIALLY ARE CALLED EXPLANATIONS; IN FACT THESE HAVE LONG BEEN MANDATORY RULES FOR APPLICATION OF LEGISLATION

The resolutions of the Plenum of the RF SAC remain in force until the adoption of the relevant decisions by the Plenum of the RF SC. Under the newly amended RF APC the arbitration courts in the reasoning of their decisions can refer to the resolutions of the Plenum and Presidium of the RF SC, as well as to the effective resolutions of the Plenum and Presidium of the RF SAC.

Despite the global, if not to say catastrophic changes in the life of arbitration courts and the actual subordination of arbitration courts to the RF Supreme Court, the RF Supreme Arbitration Court did not "folded its wings" in anticipation of the inevitable, but in the past year 2014 (of course until 07 August 2014) was marked by a number of relevant and demanded explanations.

The explanations of the Plenum of the RF SAC only officially are called explanations; in fact these have long been mandatory rules for application of legislation. And de jure they are mandatory only for arbitration courts, while de facto for all potential parties to the trial.

THE LAW SEEMS A KIND OF TOOL, AND THE EXPLANATIONS OF THE PLENUM OF THE RF SAC AN INSTRUCTION FOR USE OF THE TOOL

Unfortunately, the legal mentality of Russian entrepreneurs does not allow solving the disputes at the level of lawyers and attorneys. As a rule, the final point in the dispute is always put by the arbitration court. In such conditions the Resolution of the Plenum of the RF SAC achieves leading positions. No one will clear up what really the law-maker meant, adopting as a law one or another rule of conduct, because the dispute will have to be resolved by the arbitration court rather than by the State Duma. Therewith the law seems a kind of tool, and the explanations of the Plenum of the RF SAC an instruction for use of the tool.

Therefore, knowledge of how to the Supreme Arbitration Court interprets the regulatory acts in a given area may predetermine the behaviour of economic entities in their activity.

In 2014, the Plenum of the Supreme Arbitration Court adopted 18 Resolutions on a wide variety of areas of law. In our review we'll focus on the most universal changes somehow affecting most Russian entities.

Resolution of the Plenum of the RF SAC from 30.05.2014 No. 33 "On some issues raised by the arbitration courts during the resolution of VAT-related cases"

Despite the name, most issues explained by this Regulation no longer raise questions in arbitration courts. The judicial community itself developed unwritten rules addressing such issues; the Resolution No. 33 only summarized them and confirmed their correctness. Another part of the legal positions of the RF SAC does not address controversial matters of the relevant area at all. Let's consider the most relevant positions:

Point 9 of the Resolution of the Plenum covers the approaches to the understanding of the civil and legal institutions for VAT purposes. Although the civil and legal meaning of concepts such as goods, works, services, formally coincides with the definition given by the RF Tax Code, in fact, the same RF Tax Code classifies, for example, in the category of services the transactions, which the civil law does not refer to service. For example, rent, lending, transfer and provision of patents, licenses, trademarks, copyrights, from the point of view of the civil law are not services, while the RF Tax Code treats them as services. The importance of this issue stems from the fact that, in accordance with subp. 1 p. art. 146 of the RF TC sales of goods (works, services) in the Russian Federation are subject to VAT. The content of the concepts of "goods", "works", "services", "sale of goods (works, services)" are covered by p. 3, 4, 5, art. 38 and p. 1, art. 39 of the RF TC.

In this Resolution the RF SAC made clear that for the purposes of resolving VAT-related disputes goods, works and services are determined in accordance with the rules of chapter 21 of the RF Tax Code. Thus, for example, art. 148 of the RF TC comes from a wider concept of services, including rent and other civil and legal obligations.

Hence it must be concluded that the application of the concept of "service" to the transactions related to use of intellectual property items, means that for the purposes of chapter 21 of the RF TC they are not considered a transfer of rights, therefore, they are not subject to the rules of art. 155 of the RF TC.

Point 12 of the Resolution of the Plenum covers some matters relating to transactions of transfer of goods (works, services) without charging a separate fee for this.

1. For example, the transfer of the taxpayer to the counterparty of goods (works, services) as addition to the main goods (souvenirs, gifts, bonuses). In accordance with the position of the RF SAC, such transaction is subject to tax in accordance with subp. 1 p. 1 art. 146 of the R FTC as transfer of goods (performance of works, provision of services) free of charge, unless the taxpayer proves that the price of the main goods includes the cost of the additionally transferred goods (works, services) and the VAT calculated on the main transaction covers the transfer of additional goods (works, services) as well.

   This means that in the cases of complex obligations and, for example, supply of additional goods (works, services) directly connected with the supply of the main goods (works, services), taxpayers should be prepared to present economically justified and documented calculations confirming that the cost of the additionally transferred goods (works, services) is included in the cost of the main sold goods (works, services) and is paid as a result of payment of the latter.
2. It is also explained that the distribution of promotional materials is not subject to VAT if it is not part of the taxpayer's activity of market promotion of goods (works, services) produced and (or) sold by it in order to increase sales and if such promotional materials do not meet the characteristics of goods, that is property to be sold as it is. In accordance with the position of the RF SAC, this approach is applicable even if the "promotional material" is worth more than 100 rubles.

   This is a very common situation in disputes with the tax service. Usually courts tend to treat transfers of goods (works, services) for promotional purposes as "transfers for own needs", and since the costs related to material values transferred are accounted by taxpayers for the profits tax purpose as costs of advertising, they are classified as transactions not subject to VAT, respectively, and the cost criterion (no more than 100 rubles) for exemption from VAT is absorbed[1].

   The explanation of the Plenum of the SAC introduces for this approach an additional criterion — the goods transferred shall not be sold "as they are", that is, they shall not pursue the purpose of satisfying receivers by consumer properties of such goods.
3. In addition, point 12 clarifies that transactions of free of charge provision of taxpayer to its employees of the guarantees and compensations in kind as provided by labor legislation are not subject to tax (for example, in connection with harmful and (or) dangerous working conditions).

Based on the explanations of the SAC we can conclude that the guarantees and compensations provided for by labor legislation, rather than by local acts (for example, the collective agreement) are not subject to VAT.

Point 16 of the Resolution of the Plenum covers the procedure for determining the tax base for VAT purposes in the case of sale of goods (works, services) through an intermediary. According to the SAC, the taxpayer is required to determine the tax base under the common rules of art. 167 of the RF TC and in the case where it sales goods

1. Resolution of the FAC of Moscow district from 23 March 2012 in the case № A40-47825/11-116-132, from 25 June 2010 in the case № A40-104444/09-127-696.

(works, services) with participation of attorney (commission agent, agent). Therefore, the latter is obliged to ensure the timely receipt from the attorney (commission agent, agent) of documented data on making transactions of shipment (transfer) of goods (works, services) and their payment.

Previously there were different opinions on this matter. For a long time it was believed that if the principal has no information about the flow of revenues of the commission agent, the principal is unable to timely account the revenues to the tax base, thus the RF TC is not violated[2].

Subsequently the position that VAT is assessed by the principal on the date of shipment of the goods by the commission agent to the buyer was dominated.[3]

The Resolution of the RF SAC provides a definitive answer and recommends the courts, for the purposes of determining the VAT tax base, to consider shipment (receipt of payment) by intermediary as shipment (receipt of payment) made by the principal.

Point 17 of the Resolution of the Plenum provided a new approach to the consequences of the failure to specify the amount of VAT in the calculation and primary accounting documents, invoices separately.

Earlier there was an opinion that if VAT is not included in the calculation of the price of goods (works, services), it must be recovered regardless of whether the arrangement has an appropriate condition (i. e., in excess of the price)[4].

The Resolution of the Plenum directs courts to the following presumption: in the absence of direct indications the price agreed by the parties is supposed to include VAT, which shall be determined by calculation.

An important explanation is given in **point 27** of the Resolution of the Plenum. It clarifies that if the amount of tax deductions exceeds the amount of VAT calculated on taxable transactions, tax deductions can be reflected by the taxpayer in the tax return for any of the tax periods of the respective three-year term. In this case, the rule of three-year term for filling tax return applies in the case of inclusion of tax deductions in the amended tax return as well.

According to the Plenum the taxpayer can choose whether to specify the deductions in the tax return for any of the tax periods of the respective three-year term or to file an amended tax return.

However, it remains unclear — when this three-year term expires: after the end of the last tax period within the term or after the deadline of submission of tax return — the 20th day of the month following the last tax period. Different approaches were formed in the judicial practice to address this problem:

1. The first position — the three-year term determines the tax periods in which deductions may be reported. If the deduction is reported in the last period of the three-year term and the tax return for this period is filed in a timely manner — not later than the 20th day of the following month, the term is not missed[5].
2. The second position — the three-year term is not extended by 20 days provided for the submission of tax returns[6].

To avoid disputable situations it seems to be safe to avoid reporting deductions in the last period of the three-year term provided for by p. 2, art. 173 of the RF TC, but to report then in earlier periods.

2. Resolution of the NWD SAC from 13.12.2006 in the case № Ф04-8319/2006(29331-A27-42.
3. Resolution of the North West District SAC from 18.04.2012 in the case № A56-28193/2011, от 14.03.2013 in the case № A56-7502/2012.
4. The grounds for this approach were p. 15 of the information letter of the RF SAC from 24.01.2000 № 51 and the Resolution of the RF SAC Presidium from 22.09.2009 № 5451/09.
5. Resolution of MD SAC from 12.02.2013 in the case № A40-86961/11-107-371, also used in the Resolution of SAC of the West Siberian District from 29.01.2013 in the case № A81-896/2012 .
6. Resolutions of the SAC of Moscow District № A40-104264/13-116-256; SAC of Moscow District № A40-32428/12, N A40-22199/11-75-95, № A40-143325/12-140-1056.

Resolution of the Plenum of the RF SAC from 06.06.2014 № 35 "On the consequences of termination of contract"

Termination of contract unilaterally or by agreement between the parties is a rather common situation and businesses are extremely concerned by its consequences. The consequences of termination of contracts stipulated by the RF Civil Code and the previously existing approaches of courts to this issue were not systematic and contradicted each other.

In the light of the provisions of the Resolution it is recommended to pay special attention to drafting agreements on termination of contract.

Find below some of the most important legal positions contained in the Resolution.

- In view of the limitations related to the freedom of contract and abuse of the right laid down by the Resolution of the Plenum of the RF SAC from 14.03.2014 № 16 "On freedom of contract and its limits" the parties may agree in the contract on the consequences of termination, other than those provided for by law. Therefore, all the consequences of termination of contracts stipulated by law shall be treated as default rules, the parties may agree on other consequences.
- Upon termination of a contract, including a framework one, the obligation of the debtor to make in the future actions that are the subject matter thereof (for example, shipment of goods under supply contract, performance of works under contract agreement, granting funds under contract of credit) terminates. This view contradicts another position of the RF SAC according to which in the event of invalidity or non-conclusion of a framework contract, contracts are treated as individual ones.
- The Plenum confirmed the correctness of the restrictive interpretation of the rule on the prohibition to demand the return of the items executed under the terminated contract. This rule applies under the common rule, if at the time of termination of the contract it is performed properly or the relevant parts of performed counter obligations are equivalent (for example, the amount of the advance paid corresponds to the contractual cost of services rendered). In the case of non-equivalence of counter representations the party is entitled to demand the return of the items transferred to it to the extent that this violates the equivalence of counter obligations agreed by the parties.
- The termination of the loan agreement, credit agreement, contract for storage of goods with depersonalization does not affect the procedure of performance of the obligation to return the property. All conditions of the terminated contract on interests, forfeit penalty and obligations that ensure the fulfilment of the obligation to return the property, remain in force until the complete performance of this obligation.
- The Regulation clarifies the rules of making the entry of termination of the registered contract in the state register. If the contract is terminated by the court, the entry shall be made under the application of the relevant party, if upon execution of the right to the unilateral unmotivated refusal such entry shall be made under the application of the terminating party with provision of evidence of notification of the counterparty, if the right to termination is related to the actions of one of the parties (for example, a violation), or other circumstances to be checked, the applications of both parties shall be submitted to the registration authority, and in case of refusal of one of the parties the entry shall be made under the court decision

related to the claim for invalidation of the contract.

In our opinion, this Resolution can have a very significant impact on the practice of resolving disputes of termination of contracts. This is especially concern the disputes of return of property to another party previously transferred to one of the parties to the terminated contract.

IN OUR OPINION, THIS RESOLUTION CAN HAVE A VERY SIGNIFICANT IMPACT ON THE PRACTICE OF RESOLVING DISPUTES OF TERMINATION OF CONTRACTS. THIS IS ESPECIALLY CONCERN THE DISPUTES OF RETURN OF PROPERTY TO ANOTHER PARTY PREVIOUSLY TRANSFERRED TO ONE OF THE PARTIES TO THE TERMINATED CONTRACT

Resolution of the Plenum of the RF SAC from 16.05.2014 № 28 "On some issues related to challenging major transactions and interested party transactions"

Approval and challenging of major transactions and interested party transactions are very common phenomenon in economic life. The Resolution contains useful explanations concerning the issues of making and approving major transactions and interested party transactions, as well as problems of their challenge.

First of all the determination of the fact in proof in cases of challenging major transactions and interested party transactions seems quite useful, that is what circumstances are subject to proof by a person filing to the court a claim for invalidation of the extraordinary transaction on the grounds that it is made in violation of the procedure of approval.

The person claiming by court the invalidation of the transaction on the grounds that it is made in violation of the procedure of approval of major transactions or interested party transactions must prove the following:

1. Availability of grounds on which the transaction is accordingly recognized a major transaction or an interested party transaction, as well as fact of violation of the procedure for approval of the relevant transaction.
2. Violation by the transaction of the rights or legally protected interests of the company or its members (shareholders), i. e., the fact that this transaction resulted in or may bring losses to the company or its member filing the relevant claim, or the occurrence of other adverse consequences for them.

In this case, as for the losses it is sufficient for the claimant to justify the fact of their infliction, proving the exact amount of losses is not required.

According to the Plenum the absence of violation of interests of the company and its members (shareholders) may be evidenced, in particular, by the following:

1. The items received by the company under the transaction were equivalent to alienation of property.
2. The performance of transaction was a way to prevent even greater losses to the company.
3. Although the transaction of the company was itself a loss, it was part of mutually related transactions united by a common business purpose, as a result of which the company had to obtain a benefit.

According to the Plenum transactions made in the course of ordinary business, and, therefore, which do not require approval may be transactions of acquisition by the company of raw materials and materials required for

the implementation of industrial and economic activities, sale of finished products, obtaining loans to pay for current transactions (ex. for purchase of bulk goods for their subsequent retail).

HOWEVER THE MERE FACT OF PERFORMANCE OF TRANSACTION WITHIN THE KIND OF ACTIVITY

However the mere fact of performance of transaction within the kind of activity referred to in the unified state register of legal entities or the articles of association as a basic one for such entity, or the fact that the company holds a license entitling it to carry out such activity is not grounds for qualification thereof as a transaction made in the course of ordinary business.

The Plenum expressed an interesting idea of the possibility of qualifying an employment contract as a major transaction or interested party transaction.

IS NOT GROUNDS FOR QUALIFICATION THEREOF AS A TRANSACTION MADE IN THE COURSE OF ORDINARY BUSINESS

According to the Plenum the possibility of qualifying an employment contract as a major transaction may be evidenced by its provisions on (single or repeated) payment of cash to employee in case of dismissal and (or) other circumstances or salary for the term of the employment contract, the amount of which makes up 25 percent and more of the book value of the company's assets. In the case of an indefinite employment contract one year is account for settlement period for the purposes of assessing the transaction as a major one, taking into account the annual nature of the report of the company's management bodies on its activity to be submitted to the members.

MAJOR TRANSACTIONS AND INTERESTED PARTY TRANSACTIONS CAN BE CONSIDERED SETTLEMENT AGREEMENTS CONCLUDED DURING TRIAL, AS WELL AS TRANSACTIONS OF DEBT FORGIVENESS, AGREEMENTS PROVIDING FOR THE COMPANY'S OBLIGATION TO TRANSFER THE PROPERTY FOR TEMPORARY POSSESSION AND (OR) USE

The Plenum also explained that, major transactions and interested party transactions can be considered settlement agreements concluded during trial, as well as transactions of debt forgiveness, agreements providing for the company's obligation to transfer the property for temporary possession and (or) use.

Resolution of the Plenum of the RF SAC from 14.03.2014 № 16 "On freedom of contract and its limits"

The principle of freedom of contract is one of the fundamental principles of the Russian civil law. However, given its declarative nature, the application in practice faces a variety of interpretations of both expanding and limiting nature. The adopted Resolution provides very important explanations of the application of this principle in the legal practice.

First of all, the courts are recommended to interpret the rules determining the rights and obligations of the parties to the contract, based on its merits and objectives of the legislative

regulation, that is, the court takes into account not only the literal meaning of the words and phrases contained in it, but also the objectives the law-maker pursued while laying down this rule. The meaning of this thesis is that based on the objectives of the law-maker it could be well concluded that even an imperative rule allows a restrictive or expansive interpretation. For example, if the imperative is aimed at protecting the weaker party to the contract, the law-maker's objectives are providing more extensive rights than those provided for by the rule itself, but it improves the position of the weaker party.

An example of such an imperative is the prohibition given in part 4 art. 29 of the Federal Law of 02.12.1990 "On Banks and Banking Activity" of unilateral change by a credit institution of the procedure for determining the interests under the credit agreement entered into with a borrower-citizen. However, this prohibition should be interpreted restrictively, that is, as a prohibition of only such unilateral change of the specified procedure, as a result of which the interest rate of a credit increases, but does not preclude such a unilateral change of the procedure under which the interest rate on the credit decreases.

Point 4 of the Resolution emphasizes the existence of the presumption of discretionary of the rule, if it does not contain an explicit prohibition of the parties' agreement of a contract provision other than those provided in it, and there are no criteria of imperativeness. It is also noted that in this case the difference between the provisions of the contract and the content of this rule itself can not serve as a basis for the invalidation of this contract or some of its provisions.

For example, art. 475 of the Civil Code, laying down the consequences of transfer to the buyer of inadequate quality goods, does not exclude the right of the parties to provide for by their agreement other effects of the said violation, including to determine in a different way the criteria of materiality of defects of goods or supplement the rights provided by this article to the buyer. The provisions of art. 782 of the Civil Code, granting to each of the parties to the service contract the right to unmotivated unilateral refusal to perform the contract and providing for unequal distribution between the parties of the adverse effects of termination of the contract, do not exclude the possibility for the parties to the contract to agree on another procedure for determining the consequences of repudiation of the contract. The rules of art. 410 of the Civil Code, laying down the preconditions of termination of the obligation by a unilateral set-off statement, do not mean a prohibition of the contract of the contracting parties to terminate the non-uniform or undue obligations, etc.

The position of the Plenum, according to which the court may apply to the contract the provisions of p. 2, art. 428 of the Civil Code on contracts of adhesion, modifying or terminating the respective contract at the request of the contracting party (p. 9 of the Resolution), if such party in concluding the contract was put in a position making difficult the harmonization of a different contents of individual terms of the contract (i.e., turned out to be a weak party to the contract) and the draft contract contained conditions that were obviously burdensome for this party and significantly breaching the balance of interests of the parties (unfair contract terms) is an interesting and new concept.

For a long time the Russian courts, contrary to the world practice, did not attach much importance to the pre-contractual circumstances. The Plenum recommended, in considering disputes on protection against unfair contract terms, to assess the disputed terms jointly with all the terms of the contract and taking into account all the circumstances of the case. Thus, in particular, the court is obliged to determine the actual ratio of negotiating powers of the parties and to find out whether the adhesion to the proposed conditions was of necessity, and also to take into account the level of professionalism of the parties in the relevant field, competition in the relevant market, whether the adhering party has a real possibility to negotiate or conclude

a similar contract with third parties on other conditions, etc.

The recommendation, in the interpretation by the court of the conditions, to carry out such an interpretation in favor of the counterparty of the party, which drafted the contract or proposed the wording of the relevant term, is of a particularly importance.

At the same time, until proven otherwise, it is assumed that this party was a person that is a professional in the relevant field, which requires special knowledge (for example, bank under a credit contract, lessor under lease contract, insurer under insurance contract, etc.).

This proposal appears to be fair and it is hoped that it will have a positive impact on the Russian judicial practice.

But we should not forget about the more common principle of contractual interpretation, as in many cases neither of the parties can not to be a professional in the relevant field, and the terms of the contract can be developed jointly by the parties. In these cases, to interpret the unclear term of the contract, in the case of exhaustion of the methods referred to in art. 431 of the Civil Code, the principle of interpretation of unclear term in favor of the creditor should apply.

In conclusion, we would like to note the obvious usefulness and relevance of the last explanations of the Plenum of the RF SAC; time will show what the explanations of the RF Supreme Court will be.

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REAL AND IMAGINED REVOLUTION: SOUNDING CHANGES OF THE LABOR LEGISLATION IN 2014

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Tax and Legal Practice
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Although in the past year the most notable and discussed reforms were the reforms of tax legislation, another noteworthy trend should be noted as well. Lawmakers have begun to actively reform one of the most, perhaps, static branches of the Russian law — the labor legislation. Let's recall in this article the most significant changes in this area, some of which are already in force, and some will take effect in the years to come.

General amendments to the labor legislation

Cancellation of "salary slavery": the main fiction of the year

The prize for the main fiction of 2014, if such a nomination had been established, would have been given to the law that, in the light of the sounding statements of journalists, cancelled the "salary slavery" depressing most Russian employees, when the employer, concluding with a bank chosen at his/her own discretion, an agreement for service of the so-called "salary project", forces the employee to receive the salary through the personal account opened with this bank. To protect employees from the arbitrariness of employers an amendment was made to article 136 of the Labor Code of the Russian Federation, which, as previously thought, was unequivocal and needed no adjustments.

> THE DEADLINE FOR SUBMISSION OF THE APPLICATION, SUBJECT TO WHICH THE EMPLOYEE WILL BE ABLE TO GET THE NEXT PAYMENT TO THE NEW DETAILS, CAN BE REALLY CONSIDERED AN INNOVATION OF THE LABOR LAW. SUCH DEADLINE MAKES UP 5 WORKING DAYS

The lawmaker proposed to employees to feel the difference between the two formulations (see below).

Let's try to understand the profound differences between the old and the new edition. The old edition required that

Part 3 of article 136 of the Labor Code of the Russian Federation, old edition	Part 3 of article 136 of the Labor Code of the Russian Federation, new edition
The salary is paid to the employee, as a rule, in the place of his/her work or is transferred to the bank account specified by the employee under the conditions provided for in the collective contract or employment contract.	The salary is paid to the employee, as a rule, in the place of his/her work or is transferred to a credit organization specified in the application of the employee under the conditions provided for in the collective contract or the employment contract. The employee has the right to replace the credit organization, to which the salary shall be translated, communicating in writing to the employer the change of the details for the transfer of the salary not later than five working days prior to the date of payment of the salary.

if the conditions of the employment contract with the employee or the collective contract had provided for the possibility to transfer the salary to a bank account, the details of such account should have been communicated by the employee independently by drawing up a separate application. It's not a too convenient option, but as we see, it does not suppose the right of the employer to choose on its own the credit organization through which the employees will receive their salary. Even if the "salary project" existed, it would not change the employee's right to require the transfer of his/her salary to other details, including to another credit organization.

SINCE 2016 IN MOST CASES OUTSTAFFING WILL BE OUTLAWED

What has changed? For the employee's salary to be transferred to a bank account he/she still have to submit the application. Unlike the earlier rule in force, now this application shall not contain all the details of the account, but only the name of the credit organization (it is still not quite clear how the employer will be able to transfer the salary having only such a limited data, but we'll omit this question as irrelevant). In addition, the employee is now entitled to replace such credit organization by submitting a new application to the employer. The deadline for submission of the application, subject to which the employee will be able to get the next payment to the new details, can be really considered an innovation of the labor law. Such deadline makes up 5 working days[1].

Prohibition of agency labor

Rumours about this change went a long time. Agency labor, often referred to as outstaffing, i. e. provision of staff, was not anyway conferred on by control and supervisory authorities, and when checking immigration or sanitary and epidemiological legislation they made clients of such services responsible for the activity of outstaffing companies. Although higher courts periodically take the side of clients[2], the so-called "staff leasing" remains a risk zone for Russian entrepreneurs.

Since 2016 in most cases outstaffing will be outlawed. On 5 May 2014 the President of Russia Vladimir Putin signed the law prohibiting from 1 January 2016 the agency labor, except for agencies specially accredited to staff legal entities, affiliated entities with actual employers.

1. Article 136 of the Labor Code of the Russian Federation as amended by the Federal Law No. 333-FZ from 04.11.2014.
2. For example, in the Resolution No. 18-AD13-36 from 24.12.2013 the Supreme Court of the Russian Federation acknowledged that the client that shown due diligence in conclusion of the outstaffing contract, shall not be held administratively liable for violation of immigration laws by the employees of the contractor.

ENTREPRENEURS USING OUTSTAFFING SERVICES, HAVE A YEAR TO DECIDE WHETHER THEY WILL CONTINUE TO USE THIS TOO

The concept of agency labor introduced in the labor legislation means the work, carried out by employees on the orders of the employer on behalf, under the direction and control of the individual or legal entity other than the employer of that employee[3]. Thus, the prohibition covers the services that have in total several features:

1. Persons who act as legal and actual employers do not match each other.
2. The employee in the course of the labor activity obey the orders of the actual employer, the legal employer is excluded from the process of the operational interaction of the employee and the actual employer.
3. The actual employer controls the work of the employee, and as a derivative feature, the employee in his/her labor activity is guided by the internal labor regulations of the actual, rather than the legal employer.
4. The employee performs his/her labor functions at the actual employer at the direction of the legal employer, rather than on his/her own initiative.

In the case of the above features, the activity of the legal employer shall comply with statutory requirements and restrictions. Such restrictions laid down by the legislation on employment of population, can be divided into restrictions on relations with employees, and additional requirements to the employer[4].

So, entrepreneurs using outstaffing services, have a year to decide whether they will continue to use this tool, and, accordingly, to select an organization that will meet the new requirements, or, on the contrary, during the same year will ensure that the services acquired from third parties, do not meet the features of "staff leasing".

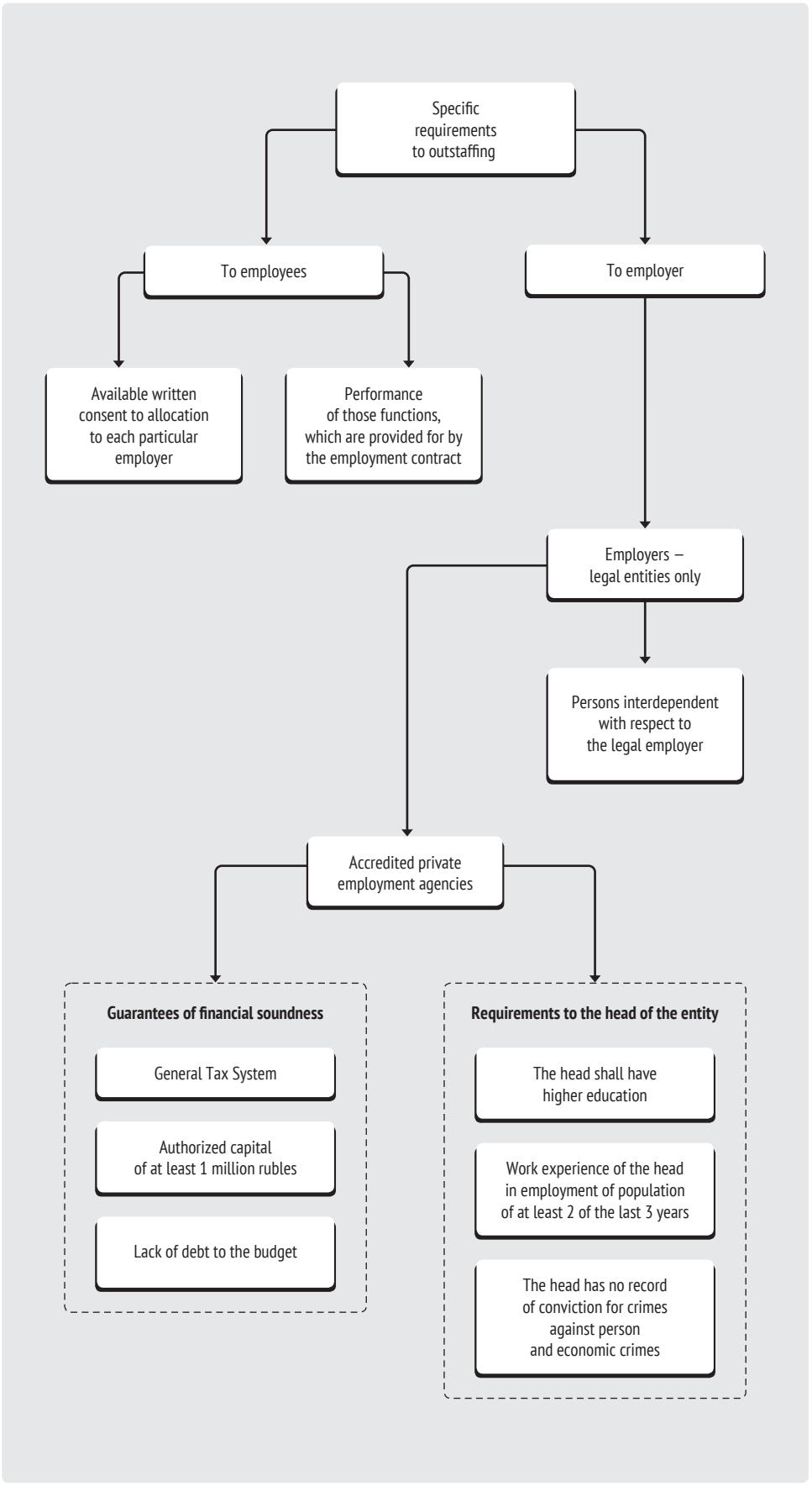
Changes in the legal status of foreign employees in Russia

The Labor Code is supplemented by a chapter regulating the particularities of labor relations with foreign citizens and stateless persons

RUSSIAN PRESIDENT VLADIMIR PUTIN SIGNED A LAW REQUIRING FOREIGN CITIZENS AND STATELESS PERSONS EMPLOYED IN RUSSIA TO INDEPENDENTLY ACQUIRE OR OBTAIN FROM THE EMPLOYER GUARANTEES OF PRIMARY HEALTH AND URGENT SPECIALIZED MEDICAL CARE

On 1 December 2014 the Russian President Vladimir Putin signed a law requiring foreign citizens and stateless persons employed in Russia to independently acquire or obtain from the employer guarantees of primary health and urgent specialized medical care[5].

3. Article 56.1 of the Labor Code of the Russian Federation as amended by the Federal Law No. 116-FZ from 05.05.2014.
4. The relevant requirements are provided for by article 18.1 of the Law of the Russian Federation No. 1032-1 from 19.04.1991 "On employment in the Russian Federation" as amended by the Federal Law No. 116-FZ from 05.05.2014.
5. Point 10 of article 13 of the Federal Law No. 115-FZ from 25.07.2002 "On the legal status of foreign citizens in the Russian Federation" as amended by the Federal Law No. 409-FZ from 01.12.2014.


Specific requirements to outstaffing
To employees
To employer
Available written consent to allocation to each particular employer
Performance of those functions, which are provided for by the employment contract
Employers – legal entities only
Persons interdependent with respect to the legal employer
Accredited private employment agencies
Guarantees of financial soundness
General Tax System
Authorized capital of at least 1 million rubles
Lack of debt to the budget
Requirements to the head of the entity
The head shall have higher education
Work experience of the head in employment of population of at least 2 of the last 3 years
The head has no record of conviction for crimes against person and economic crimes

The law also included in the list of documents that must be submitted by a foreign citizen for employment in a Russian organization, besides the primary identification documents, visas, temporary residence permit or residence permit, as well as a work permit or a patent, insurance for provision to the employer of primary health care and emergency specialized care in Russia. If the employee does not have such insurance, the employer is entitled to conclude in his/her favor a contract for provision of paid medical services, but anyway the foreign employee or the employee who does not have citizenship, upon employment must have guarantees of the minimally necessary set of health care services[6]. In this case, the termination of health insurance is one of the grounds for termination of the employment contract with the employee[7].

Other additional grounds for termination of employment contract with a foreign employee are as follows:

1. Suspension, expiration or cancellation of the permit to hire and use foreign employees issued to the employer.
2. Expiration or cancellation of the document justifying the right of residence (temporary stay) and (or) the employment of employees in the Russian Federation, issued to the employee.
3. Bringing the number of employees who are foreign citizens and stateless persons in accordance with the legal regulations.
4. Impossibility of provision to the employee of previous job at the end of the temporary transfer of the employee to another job due to exceptional cases endangering the life or normal living conditions of all or a part of the population, or downtime.
5. Impossibility to temporarily transfer the employee to another job due to the fact that during the calendar year such transfer has already been made[8].

The last two grounds for termination of the employment contract with foreign employees are connected to another important rule introduced in the Labour Code regulating the right of the employer to transfer the foreign employee to another job for a period not exceeding one calendar month and at most once a year in case of emergency situations that threaten the life or normal living conditions of the population. In such cases, the employer is entitled to hire the employee for the work, not specified in his/her work permit or patent[9].

The sense of the rules introduced in the labor legislation in respect of foreign employees is that, on the one hand, the official employment of such persons is complicated by the need for provision by the employee of health insurance; on the other hand, the difficulties faced at the employment stage are compensated by the simplified procedure of dismissal.

It appears that although the lawmaker attempts to solve urgent problems of migration with labor law means that, of course, is worthy of all praise, now they are extremely careful and awkward. Despite this, if the trend continues, perhaps the official employment of unskilled foreign labor force will compete with illegal methods.

On 1 January 2015 accreditation of foreign employees of branches and representative offices of foreign companies in Russia is introduced

Accreditation of branches and representative offices of foreign organizations, opened in the Russian Federation, become a familiar procedure. Prior to the state registration of such separate divisions with the tax authority, documents for accreditation

6. Article 327.3 of the Labor Code of the Russian Federation, as amended by the Federal Law No. 409-FZ from 01.12.2014.
7. Point 8 of part 1 of article 327.6 of the Labor Code of the Russian Federation, as amended by the Federal Law No. 409-FZ from 01.12.2014.
8. Article 327.6 of the Labor Code of the Russian Federation, as amended by the Federal Law No. 409-FZ from 01.12.2014.
9. Article 327.4 of the Labor Code of the Russian Federation, as amended by the Federal Law No. 409-FZ from 01.12.2014.

are submitted to the State Registration Chamber of the Ministry of Justice of Russia, and as for the representative offices of credit organizations — to the Bank of Russia.

On 1 January 2015 personal accreditation of employees of branches and representative offices of foreign legal entities is introduced . The accreditation authorities are the same authorities that are responsible for the accreditation of the relevant branches and representative offices as well: the State Registration Chamber of the Ministry of Justice of Russia for branches and representative offices of any companies other than credit organizations, and the Bank of Russia for credit organizations.

The State Registration Chamber posted on its official website only information about accreditation of employees of representative offices and their family members; such information on employees of the branches is likely to appear in the near future. Thus, the Chamber communicated that the term of personal accreditation of employees and their families will be limited to the term of the business permit of the representative office issued by the Chamber. The extension of the personal accreditation will be made in case of extension of accreditation of the representative office.

As confirmation of accreditation foreign employees and their family members are issued accreditation cards.

10. Article 15.1 of the Law of the Russian Federation No. 5340-1 from 07.07.1993 "On chambers of commerce and industry in the Russian Federation", as amended by the Federal Law No. 106-FZ from 05.05.2014.

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AMENDMENTS TO THE RUSSIAN LAW ON INDIVIDUALS

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The past year 2014 was not the easiest in the modern Russian history; besides global geopolitical changes, the "wind of change" did not come by the Russian legislation as well. The changes affected various aspects of life of individuals and brought pleasant surprises expressed in the introduction of investment deductions and permission to get certain types of income to accounts opened with banks located outside the Russian Federation, as well as changes in tax legislation, which resulted in increased tax burden both for ordinary citizens who own real estate, as well as for shareholders who get income in the form of dividends. In addition, the past year brought to the citizens of the Russian Federation, who have the legal right of permanent residence outside the Russian Federation, the obligation to notify the authorities of the federal migration service of the existence of this right.

Pursuant to the Federal Law from 21.12.2013 No. 379-FZ, from 1 January 2015 the chapter 3 of the Federal Law from 22.04.1996 No. 39-FZ "On the Securities Market" is supplemented by article 10.3, which regulates the opening of individual investment accounts.

The individual investment account is an account of internal accounting designed for separate accounting of funds, securities of the client — individual, the obligations under contracts signed at the expense of the specified client, and which is opened and maintained in accordance with art. 10.3 of the Federal Law "On the Securities Market". Any professional participant of the securities market will be entitled to sign such a contract. Each client will have the right to open only one such account.

THE PURPOSE OF INTRODUCTION OF INDIVIDUAL INVESTMENT ACCOUNTS IS TO INCREASE THE ATTRACTIVENESS OF INVESTMENTS IN THE STOCK MARKET INSTRUMENTS FOR PRIVATE INVESTORS BY PROVIDING TAX DEDUCTIONS

As a means to stimulate opening of such accounts the individual will be

entitled to an investment tax deduction on the funds that he/she transferred (in the amount of at most 400 thousand rubles), or on the funds that he/she will receive after closing of the account.

The purpose of introduction of individual investment accounts is to increase the attractiveness of investments in the stock market instruments for private investors by providing tax deductions.

Two types of tax deductions are provided for individual investment account. The taxpayer can choose only one type of deduction. Combining both types of deductions is impossible over the whole term of the contract for maintenance of individual investment account.

The first type of investment deduction: the taxpayer will be able to obtain annually a tax deduction for the personal income tax in the amount of money deposited in the tax period on the individual investment account. (subp. 2 p. 1, art. 219.1 of the RF TC)

THE TOTAL AMOUNT OF FUNDS THAT CAN BE TRANSFERRED DURING A CALENDAR YEAR UNDER SUCH A CONTRACT SHALL NOT EXCEED 400 000 RUBLES

The second type of investment deduction: at the end of the contract for maintenance of IIA, after at least three years, the taxpayer can get a deduction for the personal income tax in the amount of income derived from investment account transactions — i. e. all profit will be exempt from tax (subp. 3 p. 1 art. 219.1 of the RF TC).

It is important to remember that upon closing the IIA earlier than three years, all amounts of refund of the income tax received from the budget shall be returned to the budget.

There are a number of restrictions on the IIA for individuals:

- the individual may have only one contract for maintenance of IIA. In the case of signing a new contract the earlier signed contract shall be terminated during a month;
- under the contract for maintenance of IIA the client may transfer to a professional participant of the securities market only funds;
- the total amount of funds that can be transferred during a calendar year under such a contract shall not exceed 400,000 rubles.

In this case, the individual may:

- demand the return of the funds and securities deposited on the IIA or their transfer to another professional participant of the securities market, with whom a contract for maintenance of IIA is signed;
- terminate the contract of one type (brokerage services contract or contract of trust management of securities) for maintenance of IIA and sign another type of contract for maintenance of IIA with the same or with another professional participant of the securities market.

In turn, the professional participant of the securities market enters into a contract for maintenance of IIA only on condition that the individual stated in writing that he/she does not have a contract with another professional participant of the securities market for maintenance of individual investment account, or that such contract will be terminated within one month at most.

Upon termination of the contract for maintenance of IIA the professional participant of the securities market shall pass information about individual and his/her IIA to the professional participant of the securities market, with whom a new contract is signed.

The PIT on securities transactions, deposited on the IIA, is calculated, deducted and paid by the tax agent on the date of termination of the contract for maintenance of IIA, except for case of termination of the contract with transfer of all assets deposited on the IIA, to another IIA, opened for the same

individual. If the contract is terminated with transfer of all assets deposited on the IIA, to another IIA, opened for the same individual, for the purposes of calculating the tax base the date of opening of the account is the date of opening of the (original) terminated contract.

The tax agent that is a source of income in transactions, deposited on the IIA, will be required to report the opening or closing of the account to the tax authority on its location within three days from the date of the relevant event.

HOWEVER, FROM 1 JANUARY 2015 THE INDIVIDUALS-CURRENCY RESIDENTS OF THE RF ARE OBLIGED TO SUBMIT TO THE TAX AUTHORITIES AT THE PLACE OF THEIR REGISTRATION STATEMENTS OF CASH FLOWS OF ACCOUNTS (DEPOSITS) OPENED WITH BANKS OUTSIDE THE RUSSIAN FEDERATION WITH SUPPORTING BANK DOCUMENTS

The Federal Law from 10.12.2003 No. 173-FZ "On Currency Regulation and Currency Control" was amended so as to specify the procedure of currency transactions of residents using their accounts opened with banks located outside the Russian Federation.

According to the amendments the accounts of the RF residents opened with banks outside the RF can be credited with the funds:

- paid as salary and other payments related to the performance by resident individuals outside the Russian Federation of their labor duties under employment contracts with non-residents, as well as paid in the form of payment and reimbursement of costs of their business trips,
- payable under the decisions of foreign courts, except for the decisions of the international commercial arbitration;
- payable in the form of pensions, stipends, alimony and other social payments;
- in the form of insurance payments made by non-resident insurers;
- payable by way of refund of funds paid earlier by resident individuals, including return of the wrongly transferred funds, refund of cash for the goods returned by resident individual to a non-resident earlier bought by him/her from such non-resident, for service paid to such non-resident.

The accounts of residents opened with banks located in member states of the Organization for Economic Cooperation and Development (hereinafter referred to as the OECD) or the Financial Action Task Force on Money Laundering (hereinafter the FATF), can be credited with:

- amounts of credits and loans in foreign currency obtained under credit agreements and loan agreements with non-resident entities that are agents of foreign governments, as well as under credit agreements and loan agreements concluded with residents of the OECD and FATF member states for a period over two years;
- the amounts of income from the lease (sublease) to non-residents located outside the Russian Federation of real estate and other property of a resident individual;
- payable by non-residents in the form of grants;

- payable by non-residents in the form of accrued interest (coupon) income, the payment of which is provided by the terms and conditions of issue of foreign securities, other income on foreign securities (dividends, bonds, bills, payments upon decrease of the authorized capital of issuer of foreign securities) belonging to a resident individual.

THE SECOND CITIZENSHIP CAN BE REPORTED BOTH PERSONALLY COMING TO THE OFFICE OF THE MIGRATION SERVICE, AS WELL AS BY MAIL. IN DECEMBER 2014 THE LAW WAS AMENDED SO AS TO ALLOW NOTIFICATION THROUGH A PROXY ACTING UNDER A NOTARIZED POWER OF ATTORNEY

However, from 1 January 2015 the individuals-currency residents of the RF are obliged to submit to the tax authorities at the place of their registration statements of cash flows of accounts (deposits) opened with banks outside the Russian Federation with supporting bank documents.

The Federal Law from 04.06.2014 No. 142 -FZ "On Amendments to Articles 6 and 30 of the Federal Law "On Citizenship of the Russian Federation" and some legislative acts of the Russian Federation", the Russian nationals who are citizens of a foreign country, are required to report it to the Federal Migration Service.

The citizens of the Russian Federation must notify the Federal Migration Service on having:

- a foreign citizenship,
- a residence permit or
- a document authorizing the permanent residence in a foreign country.

The second citizenship can be reported both personally coming to the office of the migration service, as well as by mail. In December 2014 the law was amended so as to allow notification through a proxy acting under a notarized power of attorney.

According to the amendments to the Federal Law from 31.05.2002 No. 62-FZ "On Citizenship of the Russian Federation", the notice shall contain the following information about the citizen of the Russian Federation in respect of whom it is submitted:

1. Surname, name and patronymic.
2. Date and place of birth.
3. Place of residence (in the absence thereof — the place of stay, and in the absence of residence and place of stay — the actual location).
4. Series and number of passport of the citizen of the Russian Federation or other identity document of the relevant citizen in the Russian Federation.
5. Name of another existing citizenship, series, number and date of issuance of the passport of a foreign state or other document confirming another citizenship of the said citizen, and (or) name, series, number and date of issue of this document to the citizen entitling him/her to permanently reside in a foreign country.
6. The date and basis of acquisition of another citizenship or receipt of the document granting the right of permanent residence in a foreign country.
7. Information on extension of the term of the document granting the right of permanent residence in a foreign country, or to obtain a new relevant document.
8. Information about filing an application to a competent authority of a foreign state on withdrawal of the citizen from the citizenship of the relevant state or refusal of available documents on the right of permanent residence in a foreign

country (in the case of submission of such application).

FOR VIOLATION OF THE NOTIFICATION PROCEDURE, THE INDIVIDUAL MAY BE HELD ADMINISTRATIVELY LIABLE AND PAY A FINE FROM 500 TO ONE THOUSAND RUBLES

Legal representatives will be obliged to send notices for minor citizens and partially incapacitated citizens.

The notice of a second citizenship must be accompanied by a copy of the foreign passport (residence permit) of the RF citizen and, if the notice shall be send by parent (guardian or trustee) — a copy of the Russian or foreign passport of the parent (guardian or trustee).

The Code of Administrative Offences and the Criminal Code of the Russian Federation are also amended.

IN THE CASE OF CONCEALING INFORMATION ABOUT HIS/HER FOREIGN CITIZENSHIP, THE INDIVIDUAL MAY BE HELD CRIMINALLY LIABLE AND PAY A FINE OF UP TO 200 THOUSAND RUBLES, OR PERFORM FORCED WORKS FOR UP TO 16 DAYS

So, for violation of the notification procedure, the individual may be held administratively liable and pay a fine from 500 to one thousand rubles.

In the case of concealing information about his/her foreign citizenship, the individual may be held criminally liable and pay a fine of up to 200 thousand rubles, or perform forced works for up to 16 days.

Meanwhile, the law provides for exceptions. They relate, for example, to individuals who are RF citizens, but permanently reside in another country.

From 01.01.2015 the amendments to the Tax Code come into force under the Federal Law No.68-FZ of 04.10.2014 "On amendments to articles 12 and 85 of the first and second part of the Tax Code of the Russian Federation and the invalidation of the Law "On taxes on personal property".

According to the amendments to the second part of the RF Tax Code chapter 32 "Tax on personal property" is introduced. The RF law from 09.12.1991 No. 2003-1 "On taxes on personal property" became invalid.

THE CADASTRAL VALUE IS THE MARKET VALUE OF THE REAL ESTATE ESTABLISHED BY THE STATE CADASTRAL APPRAISAL

This chapter provides for a new procedure for calculating the tax base for the property tax.

The main innovation is the fact that the amount of tax is calculated on the basis of the cadastral value of the property.

The cadastral value is the market value of the real estate established by the state cadastral appraisal determined by mass methods of appraisal, or, if it is impossible to determine the market value by mass methods of appraisal, the market value, determined individually for each particular real estate in accordance with the legislation on appraisal activity.

The results of the cadastral appraisal are subject to approval by the executive body of the subject of the Russian Federation or the local self-government authority, the transfer to the Rosreestr and official publication. After this the information on the cadastral value of

the property item shall be entered in the state cadastre of real estate.

The law laid down the following tax rates:

0.1 % for:

- residential buildings, residential facilities;
- constructions in progress if the designed purpose of such objects is a residential house;
- unified real estate complexes, which include at least one residential facility (residential house);
- garages and parking spaces;
- household buildings or structures, the area of each of which does not exceed 50 square meters and that are located on land lots provided for private auxiliary, suburban household, gardening, horticulture or individual housing construction.

2% for items included in the list approved by the competent executive authority of the Russian Federation:

- administrative and business centers, shopping centers and facilities in them;
- non-residential facilities, the purpose of which is accommodation of offices, retail facilities, catering facilities and household services which actually are used for accommodation of offices, retail facilities, catering facilities and household services;
- real estate of foreign organizations that do not operate in the Russian Federation through a permanent establishment, and real estate of foreign organizations not related to the activity of such organizations in the Russian Federation through permanent establishments;
- residential houses and residential facilities, not accounted for in the balance sheet as fixed assets in the manner prescribed for bookkeeping.
- objects of taxation, the cadastral value of each of which exceeds 300 million rubles.

0.5% for other objects of taxation.

The tax rates may be increased, but not more than three times or reduced to zero by the regulatory and legal acts of the representative offices of the municipal entities.

IN DETERMINING THE TAX BASE, APARTMENTS OF 20 SQ. M., ROOMS OF 10 SQ. M., RESIDENTIAL HOUSES OF 50 SQ. M. ARE TAX EXEMPT

In determining the tax base, apartments of 20 sq. m., rooms of 10 sq. m., residential houses of 50 sq. m. are tax exempt. The tax is charged on areas that are not subject to tax benefit.

During the first four tax periods from the beginning of application of the cadastral value of objects, the amount of tax payable will be calculated with a special formula using a rate equal to:

0.2 — applicable to the first tax period;

0.4 — applicable to the second tax period;

0.6 — applicable to the third tax period;

0.8 — applicable to the fourth tax period.

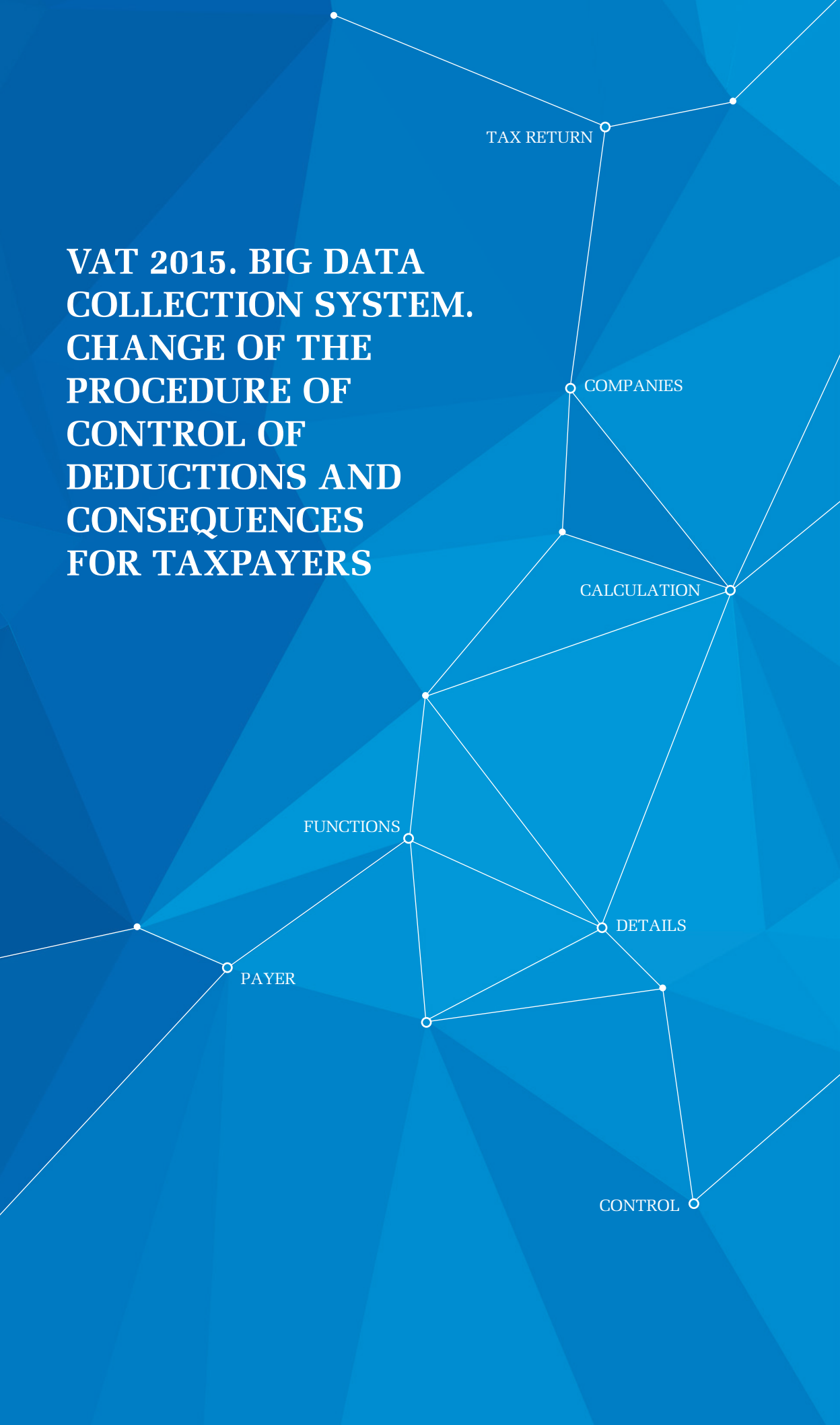
THE DIVIDEND INCOME RECEIVED BY INDIVIDUALS FROM 1 JANUARY 2015 IS SUBJECT TO TAX AT A RATE OF 13%

From 1 January 2015 a new obligation of individuals applies — to report to the inspectorate about the objects of transport tax, land tax and property tax if during the entire period of ownership of the said real estate or vehicle the taxpayer did not receive notices and did not pay taxes.

The Federal Law of 24.11.2014 No. 366 -FZ "On amendments to the second part of the Tax Code of the Russian Federation and certain legislative acts of the Russian Federation" invalidated point 4 of article 224 of the Tax Code, which provides for a 9% for personal income derived from the share of participation in organizations received in the form of dividends.

Thus, the dividend income received by individuals from 1 January 2015 is subject to tax at a rate of 13%. At the same time, it does not matter for what period the dividend is paid; for tax purpose the date of actual receipt of funds is applicable.

VAT 2015. BIG DATA COLLECTION SYSTEM. CHANGE OF THE PROCEDURE OF CONTROL OF DEDUCTIONS AND CONSEQUENCES FOR TAXPAYERS



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What changes for VAT payers in 2015:

Essence of changes	Comments
The VAT returns shall contain data from the sales ledger and the purchase ledger	The tax return shall contain data on invoices, on which basis the company assessed tax and reported deductions (p. 5.1 art. 174 of the RF TC). This also applies to companies operating under the simplified tax system and UTII that issue invoices with VAT. As a result, inspectors will be able to compare the indicators of the sales ledger and the purchase ledger of the supplier and the buyer. For example, to identify VAT deductions on transactions with sellers that do not pay taxes to the budget
Companies and entrepreneurs (except for intermediaries) are not required the ledger of invoices issued and received	Only intermediaries- commission agents and agents acting on their own behalf, as well as companies operating under a freight forwarding contract, and developers will be required to keep a ledger of invoices issued and received. The registration of invoices for commission fees in the ledger is not required (p. 3, 3.1 art. 169 of the RF TC)
Intermediaries- taxpayers will be required to include in the tax return the data from the ledger of invoices issued and received	Tax officials will be able to monitor which invoices were issued by the intermediary upon sale or purchase of goods. For example, to compare them with data reported by the principal (p. 5.1 art. 174 of the RF TC)
Intermediaries operating under a special regime will be required to submit to the tax officials the ledger of invoices issued and received in electronic form	Companies operating under the simplified tax system or the UTII that are intermediaries will be required to submit to the tax inspectorate the ledger of invoices issued and received via the Internet no later than

Essence of changes	Comments
	the 20th day of the month following the reporting quarter (p. 5.2 art. 174 of the RF TC). Inspectors will also be able to compare the data from the ledger with the financial statements of principals
Tax officials will have the right to request invoices and primary documents, if the data of the financial statements of the supplier do not match the data provided by the buyer	Inspectors will be able to request invoices, primary and other documents (ex. contracts) if they reveal differences in the tax return of the company. Or if the data of the tax return of the supplier or the ledger of the intermediary do not correspond to the financial statements of the buyer or the principal. In this case, inspectors have the right to request documents, if revealed deficiencies evidence that the company understated VAT or overstated the amount of tax recoverable (p. 8.1 art. 88 of the RF TC)
Tax officials will be able to inspect the premises of the company, if they found inconsistencies in the financial statements or the tax return contains the amount of the tax recoverable	Now judges consider that tax officers are not entitled to inspect during the desk audit the site and premises of the company, such as storage facilities (p. 24 of the resolution of the Plenum of the RF SAC from 30 July 2013 No. 57). From 2015 these VAT-related changes will lay down such right of inspectors in the RF Tax Code (p. 1, art. 92)
Companies operating under the simplified tax system and the UTII that are tax agents and intermediaries will be required to submit VAT return in electronic form	If the company operating under the simplified tax system withholds tax upon the acquisition of goods from a foreign organization or leases state or municipal property and is an intermediary, the VAT return shall be submitted to the inspectorate in electronic form (p. 5, art. 174 of the RF TC).

Let's consider in more details the procedure for control over deductions and consequences for taxpayers.

From 1 January 2015, submitting VAT returns, we'll begin to upload there purchase ledgers and sales ledgers, the ledger of invoices issued and received for intermediaries. All information will be stored in "Big Data" system of the FTS of Russia. To work in this system, the special software "ASK VAT-2" is developed. How does the software work? All invoices will flow into a nationwide database. The software will itself compare data on each transaction in the chain of movement of goods. The system will show to inspectors the tax breaks in transactions with deductions, but on which VAT is not paid. By such discrepancies tax officers will be able to demand from companies invoices and primary documents. This right is given to them from 1 January 2015. Accordingly, if the taxpayer is engaged in relationships with the so-called unscrupulous contractors that do not assess VAT payable to the budget, all VAT deductions that do not correspond to VAT accruals will be visible in "Big Data" system. Further information about illegal deductions will be sent to the tax officials in the territorial inspectorates and it will be immediately clear what amounts of VAT are illegally reported as deductible or refundable. The result can be the field tax audit. In 2015, a special service will start to operate where the invoice number will show whether the supplier assessed VAT on transactions or not. The service starts working from 1 January 2015 and now can identify unscrupulous suppliers and each fact of their failure to

pay VAT. After that, tax officers may send an inquiry to the organization, which did not report the sale and therefore did not pay VAT. It is very likely that tax officials will not receive any answer. Moreover it is likely that the tax officers will block the settlement accounts of that supplier and, on the other hand, if they get the answer that they did not sell anything to us, the taxpayer-buyer will have the amount of tax deductions reduced.

ASK VAT-2 functionality

The automated control system VAT-2 is designed for operation at RF FTS equipped facilities of all levels, up to the territorial tax authorities, and is not an autonomous system.

Functions

ASK VAT-2 is designed to perform the following functions:

1. Acceptance of tax returns from taxpayer (obtaining of container, check of digital signatures, check with the scheme, transmission of the main VAT return to the EDP system, formation and transmission of the receipt).
2. Uploading and processing of the ledgers of invoices issued/received.
3. Sending of messages to the TP, including on refusal to accept tax return, results of the cross-audit, etc.
4. Receipt and processing of updates to the VAT return. Including processing of additional sheets to the Ledgers.
5. Check of the INN of the TR and counterparty by control figures.
6. Processing of transactions involving intermediaries.
7. Performance of audits, SF of previous reporting periods provided for deduction.
8. Loading of data of VAT returns.
9. Maintenance of information according to the data of Ledgers of VAT returns.
10. Implementation of the format-logical control of data of VAT returns.
11. Comparison of data of purchase ledgers with the data of purchase ledgers of counterparties.
12. Reporting on the work of the System.
13. Provision of data for visualization of information in the System of provision of results.

VAT return

The statements for the first quarter of 2015 shall include a new VAT return approved by the order of the Ministry of Finance of Russia from 29.10.14 No. MMV- 7-3/558 @.

It is the new format of the tax return that allows tax authorities to obtain sufficient information to control secularity of accruals and deductions of VAT, as it contains information about all VAT accruals and deductions in terms of invoices.

The developed form differs significantly from the form from 2014. In particular, from 2015, the organizations will be required to include in the VAT return information from the purchase ledgers and sales ledgers. In case of the agency business the VAT return shall contain information specified in the ledger of invoices issued and received.

The tax return includes:

- the title page,
- the sections:
    1. “Amount of tax payable to the budget (recoverable from the budget), according to the data of the taxpayer”.
    2. “Amount of tax payable to the budget, according to the data of the tax agent”.
    3. “Calculation of the amount of tax payable to the budget for transactions subject to tax at the rates provided for in points 2-4 of article 164 of the Tax Code of the Russian Federation”, appendix 1 to section 3 of the tax return “Amount of tax recoverable and payable to the budget for the past calendar year and the previous calendar

years", appendix 2 to section 3 of the tax return "Calculation of the amount of tax payable on transactions of sale of goods (works, services), transfer of property rights, and amount of tax deductible, by foreign organization engaged in entrepreneurial activity in the Russian Federation through its subdivisions (representative offices, branches)".

4. "Calculation of the amount of tax on transactions of sale of goods (works, services), for which justification of application of the tax rate of 0 percent is documented".
5. "Calculation of the amount of tax deductions for transactions of sale of goods (works, services), for which justification of application of the tax rate of 0 percent was previously documented (not documented)".
6. "Calculation of the amount of tax on transactions of sale of goods (works, services), for which justification of application of the tax rate of 0 percent is not documented".
7. "Transactions not subject to tax (exempt from tax); transactions not recognized subject to taxation; transactions of sale of goods (works, services), the place of which is not recognized the Russian Federation; as well as the amounts of payment, partial payment against future supplies of goods (performance of works, provisions of services), which cycle of manufacturing is more than six months".
8. "Details from the purchase ledger on the transactions reported for the past tax period", appendix 1 to section 8 of the tax return "Data from additional sheets of the purchase ledger".
9. "Data from the sales ledger on transactions reported for the past tax period", appendix 1 to section 9 of the tax return "Data from additional sheets of the sales ledger".
10. "Data from the ledger of invoices issued on transactions carried out on behalf of another person on the basis of commission contracts, agency contracts or freight forwarding contract reported for the past tax period".
11. "Data from the ledger of invoices received on transactions carried out on behalf of another person on the basis of commission contracts, agency contracts or freight forwarding contract reported for the past tax period".
12. "Data from invoices issued to persons referred to in point 5 of article 173 of the Tax Code of the Russian Federation".

VAT return is submitted on a quarterly basis. The term of submission of tax return from 2015 is not later than the 25th day of the month following the expired quarter. In 2015, as in 2014, the document is received by tax inspectorates in electronic form only.

Let's summarize. From 1 January 2015 relationships with dubious counterparties should be avoided, since the right to VAT deduction will be initially controlled by tax authorities not by means of desk audits in the event of VAT recoverable and not through field audits every three years, but much operatively due to the use of "Big Data" RF FTC.

The issue on how tax authorities will "remove" the VAT inappropriately reported as deductible, is not yet clear. But I believe that the practice will be based on evidence in court of the fictitiousness of transaction. As a result, besides the deprivation of the right to deduct VAT, costs taken into account when calculating the tax base for profits tax will.

OVERVIEW OF LEGISLATIVE CHANGES OF FOREIGN JURISDICTIONS

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2014 was marked by many events. Also, different countries adopted important legislative acts. We will focus in this article on some of the most significant legislative changes of foreign jurisdictions. We will speak about Cyprus, which adopted the Foreign Account Tax Compliance Act (abbreviated form - FATCA), the requirements for filing financial statements of Cypriot companies tightened, the rules of the regulator changed. In addition, we will mention the changes of the legislation of the British Virgin Islands.

Cyprus signs agreement with United States under FATCA

On 02 December 2014 the Cypriot finance minister and the US ambassador to Cyprus formally signed the intergovernmental agreement between Cyprus and the United States under the Foreign Account Tax Compliance Act (FATCA). The act is a US tax measure enacted in 2010 to prevent and detect tax evasion on income derived by US persons (citizens or residents) from sources outside the United States, improve taxpayer compliance and create greater transparency by strengthening information reporting and compliance with respect to US accounts and assets held overseas.

Like other EU members, in 2013 Cyprus undertook to enter into a Model 1 intergovernmental agreement (under which institutions, subject to FATCA, report information to their own tax authorities for onward transmission to the US authorities). Prior to the formal signature of the agreement, Cyprus was treated as having an agreement in effect from April 22 2014, which enabled foreign financial institutions resident in Cyprus to register on the Internal Revenue Service/FATCA website. In addition, the Assessment and Collection of Taxes Law will be amended to include the collection and automatic exchange of information in line with FATCA.

The purpose of FATCA

The purpose of FATCA is to "detect, deter and discourage offshore tax evasion" by US citizens or residents thus creating a greater transparency by strengthening information reporting and compliance with respect to US accounts.

Major functions impacted:

- Client on-boarding;
- Tax reporting;

- Tax withholding;
- Governance.

What are the consequences of being non-compliant?

FATCA imposes a 30 per cent withholding tax on "withholdable" and "pass-through" payments made to a recalcitrant account holder or a non-participating FFI.

Reporting

FATCA requires reporting to the IRS certain information on direct and indirect US account holders. FATCA reporting will first be required in September 2015 (for 2014 activities), and will be less detailed for 2014 activity. More detailed requirements will be phased in for 2015 and later years.

The approach is US Indicia based on aggregated account balance threshold.

The documentation collected is based on the principle: if US Indicia has identified additional documentations required which are beyond Anti-Money Laundering obligations.

An account holder has indicia of U.S. status if he/she:

- is a U.S. citizen or resident;
- was born in the U.S.;
- has a U.S. residence or mailing address;
- has a U.S. telephone number;
- has provided standing instructions to transfer funds to a U.S. based account;
- has granted power of attorney over the account to a person with a U.S. address;
- has a "care of" or hold mail address that is the sole address of account holder.

To sum it up, the FATCA regulation combats offshore tax evasion on US source income maintained with FFI. It serves the goal of identifying US Person status and accounts held by such individuals & entities (> 10%). It though carries some additional complexities, for example: the change in circumstances, 30+ statuses, repeatable remediation procedure, unpredictable changes in regulation expected in future. FATCA being a new piece of legislation in Cyprus as well as in some other countries needs to be studied in detail and in no way should it be neglected.

Talking about the innovation of the intergovernmental agreement between Cyprus and the USA, we come to the no least important change that will undoubtedly affect the business of companies in Cyprus, namely — tightening of requirements to reporting deadlines for Cyprus companies.

Requirements to submission of financial statements of Cyprus companies

To update the information and records the Registrar of Companies of Cyprus decided to proceed with the liquidation of dormant or inactive companies. A company is considered inactive, if it fails to provide the following:

- annual report with the financial statements for the period till 2013, inclusive, and/or;
- fails to pay the state annual fee (350 euros per year).

In the case of failure to submit the annual financial statements for the period till 2013 inclusive, in accordance with article 327 of the Companies Act, a company is excluded from the register of companies under the following procedure:

1. The first notice is mailed with a one month-term of respond.
2. The second notice is sent by registered mail within 14 days, in the case of failure to receive the response to the first notice. The company shall respond within one month.
3. The publication in the Cyprus Government Gazette. Should the company fail to respond to the second notice, upon expiration of one month an entry will be published in the Cyprus Government Gazette on closure of the company, mailing at the same time the Third

Notice (notice of liquidation) to the company. The company has a 3 month-term to respond.

Thus, the total time till the final deactivation of a company makes up about 5 months.

If the company responds to notices received and provides all the necessary financial statements to the Registrar of Companies, the above procedure for removal of the company from the register may be at any suspended time during the entire period. It is important to note that removal of the company from the Register is not equivalent to the liquidation procedure, because in the first case, the company is "frozen", just loses its status and legal capacity, but can be restored at the request of any interested person, including tax authorities, the prosecutor's office.

Non-payment of annual state duty

Pursuant the Law 190 (I)/2012 from June 2011, all companies entered in the Cyprus Register of Companies, are obliged to pay till 30 June and further to pay the state duty to be considered capable legal entity, as well as to maintain records in the register of companies. In case of delayed payment of the appropriate deputy, the company is obliged to pay a fine, as follows:

- two (2) month delay from the due date, fine of 10%;
- five (5) month delay from the due date, an additional fine of 30%;
- if the company fails to pay the annual duty with the fines imposed on it, the Cyprus Registrar of Companies removes the company from the Register of Companies in accordance with the Companies Act.

As for the method of payment of the duty and fines on it, it can be paid independently via the electronic payment system (JCC) by Visa credit card, cash at the cash desk of the Cyprus Registrar of Companies or through secretary/ administrator of the Cyprus company.

Tightening of requirements to deadlines for reporting and to payment of duty (the latter is not an innovation of 2014) is aimed at maintaining active companies and closing "abandoned" ones.

Another tightening is connected with the all-European tendency to combat money laundering: the European Union introduces more new rules to control the flow of funds in this fight. Let's focus on such innovations in Cyprus.

Directives of the European Union and the Cyprus Securities Commission

During the annual meeting in Berlin of the OECD's Global Forum on tax transparency and exchange of information, Cyprus became one of the first signatories of the new Standard of automatic exchange of tax information. The signing of this document opens a new stage of automatic exchange of information, which is based on the provisions of the multilateral OECD Convention on mutual administrative assistance in tax matters. It is expected that countries that have signed the Standard first will exchange information on tax matters since September 2017. Other countries will start automatically the exchange in 2018.

The tax legislation became tighter. Some of the basic changes of taxation in Cyprus are the following:

- managing directors of companies are responsible for tax payment of their company;
- fines for failure to pay taxes or tax evasion increased.

On 28 March 2014 the Ministry of Finance of Cyprus issued a new decree, valid for 35 days, under which a number of reliefs are introduced in respect of the restrictive measures imposed in Cyprus a year ago. In an official press release the Ministry stated that this decree is evidence that "the island's banking system stabilizes and recovers confidence". However, it is

worth mentioning that the Decree on international banks remains unchanged.

New reliefs are as follows:

1. Cancelled limit for withdrawal of funds for individuals and legal entities.
2. Increased current monthly limit on remittances in the Republic: for individuals — from € 20 000 to € 50 000; for legal entities — from € 100 000 to € 200 000.
3. Any person is allowed to open a new bank account subject to the following conditions:
   - such person is not an existing client of a credit organization;
   - designation of the account;
   - term deposit; and the total amount of invested assets shall make up over € 5 000.

   However, it is worth considering that the new term deposit can not be withdrawn before the expiration of the term of deposit.
4. The prohibition to withdraw the term deposit before it expires is cancelled.

In general, the Ministry of Finance said that Cyprus "has successfully passed the key points in the recovery process" and this proves that the banking sector of the island effectively works to strengthen their positions.

These were the main innovations in Cyprus. Now we would like to highlight a change of the legislation of the British Virgin Islands.

Change of the legislation of the British Virgin Islands

The amendment made to the British Virgin Islands legislation in September 2014 introduced a more precise definition of bookkeeping.

The amendments to the Mutual Legal Assistance (on Tax Matters) Act, 2003 (MLA), published in 2012 bound the limited liability company to carry out bookkeeping in accordance with the OECD. The 2014 amendments greatly expanded the requirements for bookkeeping.

The new edition of the law contains the concept of the so-called "supporting documentation". The law does not contain a specific list of documents, but "supporting documentation" means any documentation reflecting the business of the company, — transactions on accounts, deals, etc. "Supporting documentation" can be invoices, copies of contracts, receipts, bank statements and other documents, allowing the preparation of financial statements. The company shall be ready at any time to submit information about its financial situation and the following information about the funds received and expended, sales and procurement of goods, data on assets and liabilities.

THE COMPANY MUST INFORM IN WRITING THE REGISTERED AGENT ABOUT THE BUSINESS ADDRESS AT WHICH THIS DOCUMENTATION IS KEPT

The company must inform in writing the registered agent about the business address at which this documentation is kept. In case of change of this address the company shall, within 14 days, inform in writing the registered agent about the relevant changes. Accounting reports and "supporting documentation"shall be kept for five years from the date of the deal (transaction). The registration agents carefully monitor compliance with this requirement; in the absence of such information, they are forbidden to serve such a company.

In this article, we have examined the changes that can not be overlooked. On the same time they follow the global trends: FATCA covers more and more countries, offshore jurisdictions gradually tighten requirements, tax authorities increase the level of control. All innovations just confirm the trend of globalization and to strengthening of the fight against tax evasion and money laundering.

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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
- Audit and related services
- 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

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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