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Review of the Changes in Legislation in 2016

Co-publisher

Dear readers,

I am happy to greet you on the pages of our corporate publication “Korpus Prava. Analytics”.

The first issue of the year 2016 we traditionally devote to analysis of the changes in legislation for the previous year, which specify the urgent legal issues in this year.
This issue will allow you to get acquainted with the procedure of recognition of an individual as a tax resident of the Russian Federation; you will know why the year 2015 became critical for the majority of taxpayers, which issues are to be emphasized during the individual bankruptcy procedure, what are the innovations in the procedure of state registration of legal entities and individual, and why the British Virgin Islands may lose their confidential status.

The experts of Korpus Prava have thoroughly analysed the key rules, which are necessary to be observed upon filing the cash flow reports in the New Year 2016. We also could not bypass the issue of the reform of civil legislation, and paid attention to the partial list of innovations approved by the Federal Law.

We continue the issue of amnesty of capitals, which we have already published in issue 3/2015 of our magazine. This issue is still of great interest. In the middle part of our issue you can find the opinions of our experts concerning amnesty of capitals: the main questions, the mistakes, the controversial points. We believe you can find much useful information.

We will be happy to see your comments and suggestions. We wish you success in the new year!

See you next time on the pages of “Korpus Prava. Analytics”!

Artem Paleev
Managing Partner
Korpus Prava

Founder and Publisher

Korpus Prava
Law & Tax

МГЮА

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Managing Partner, Korpus Prava

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Marketing and Advertisment

Alexandra Kaperska
Business Development Manager, Korpus Prava

Phone: +7 495 644-31-23 (Russia)
Phone: +357 25-58-28-48 (Cyprus)
E-mail: kaperska@korpusprava.com

Editorial's address: 10 Bolshoy Nikolovorobinsky pereulok, Moscow, 109028, Russia
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WHAT THE LAST YEAR PRODUCED: REVIEW OF LAW AMENDMENTS IN 2015

Yana Karausheva
Junior Lawyer
Tax and Legal Practice
Korpus Prava (Russia)

This review addresses the most significant law amendments, which define legal issues that would be vital in Russia in 2016.

Capital Amnesty Continues

2015 passed under the sign of capital amnesty initiated by the President of the Russian Federation and implemented by the legislator. According to data published in mass media at the end of last year, voluntary declaration by citizens of assets abroad turned out to be less in demand than its initiators expected. Apparently, that is why the state has granted additional opportunity to exchange information for forgiveness: the deadline for voluntary declaration of foreign assets was extended until June 30, 2016. Terms for the declaration of capitals have remained the same.

The applicant and nominee holder, of whom information is set forth in the declaration, are released of criminal liability for a number of economic crimes, such as tax evasion by individuals and legal entities, non-performance of obligations of a tax agent and avoidance of fulfillment of obligations on repatriation of monetary funds. Release of liability for tax violations is granted provided these violations are related to acquisition, use or disposal of property and (or) controlled foreign companies, information whereof is set forth in the declaration. The applicant and nominee owner specified in the declaration are not subject to administrative liability for carrying out entrepreneurial activity without state registration or without special permit (license). Release of liability for currency violations is guaranteed in respect of monetary funds credited to the declared accounts (deposits) in foreign banks as of January 1, 2015.

THE DEADLINE FOR VOLUNTARY DECLARATION OF FOREIGN ASSETS WAS EXTENDED UNTIL JUNE 30, 2016

As before, declaration may be submitted to the tax authority only once. Thus, in 2016 only those who did not do this last year, can use the gifts of amnesty. Detailed analysis of law on capital amnesty was published in edition 3/2015 of our journal.

Statements on Movements of Monetary Funds

Long pause regarding when the innovation binding individuals to submit statements on movements of monetary funds on accounts (deposits) in foreign banks would be enforced has ended. Amendments to the currency control law have been enforced since January 1, 2015. In order for the mechanism to work, the Government of the Russian Federation had to define procedures for the submission and form of statements. It was made in Order of the Government of the Russian Federation No. 1365 dd. 12.12.2015. The main rules to follow at submission of statements in new 2016 are set forth below.

Deadline for the submission of statements is June 1, 2016. Statement is filed for the period from January 1 until December 31 of the report year inclusively. Currency residents are released of obligation to file statements on accounts closed in 2015. If several individuals being residents open account (deposit) in a foreign bank, the statement is filed by each such resident.

It is specified that the tax authority is entitled to request from individual being a resident supporting documents and information related to conduct of currency transactions on accounts and deposits, information whereof is subject to disclosure. Individual is entitled to submit supporting documents proactively together with the statement. If the tax authority reveals errors and/or missing information in the statement, the resident will be notified on this; he/she will have to submit revised (adjusted) statement.

Information regarding movement of monetary funds and directly disclosed in the statement includes the following:

- account balance as of the beginning of the report period;
- total amounts of funds credited to the account during the report period;
- total amount of funds debited from the account during the report period;
- account balance as of the end of the report period.

If resident has several accounts (deposits) abroad, information on all accounts is specified in one statement at once. Statement is filed to the tax authority in hard copy directly by individual being a resident or his/her representative or is delivered by registered mail with return receipt.

Regulations on administrative liability for noncompliance with procedures and deadlines for the submission by individuals being residents of statements on movements of monetary funds on accounts in foreign banks come into force since January 1, 2016. The size of the administrative fine for the delay of statement submission depends on the duration of violation and varies from 300 to 3 000 Rubles. Recurrent violation by individual of procedures for the submission of statement results in imposition of administrative fine in the amount of up to 20 000 Rubles.

Reform of Civil Legislation

The second half of 2015 was marked with enacted massive amendments introduced to the first part of the Civil Code of the Russian Federation. Here is only partial list of innovations approved by Federal Law No. 42-FZ dd. 08.03.2015:

- new types of agreements: option agreement, option for the execution of the agreement, subscriber's agreement;
- possibility to stipulate in the agreement payment for unilateral agreement repudiation;
- possibility to stipulate in the agreement obligation of one party to reimburse the other party certain material losses not related to breach of obligation;
- possibility for creditors of one party on similar obligations execute agreement on the procedures for the settlement of claims against the debtor;
- new way of securing obligations: business organizations may grant independent guarantees;
- submission of inaccurate information on circumstances essential for the execution of the agreement may incur obligation to reimburse losses or to pay to other party penalty specified in the agreement.

New provisions of the Civil Code enacted on June 1, 2015, were analyzed in detail in edition 2/2015 of our journal.

Prohibition on Agency Labor

The legislator prepared us for this event for one year and a half: since January 1, 2016 prohibition on agency labor, also referred to as outstaffing, comes into force. Services for personnel lease became the prerogative of private employment agencies, which passed accreditation[1]. Such agency should comply with a number of imperative law requirements regarding labor activity of an employee. For example, the labor contract executed by the employment agency with an employee assigned for temporary employment with the receiving party, should directly define labor functions, which the employee performs to the benefit, under control and supervision of individual or legal entity, which or who is not the employer under such labor contract.

> SERVICES FOR PERSONNEL LEASE BECAME THE PREROGATIVE OF PRIVATE EMPLOYMENT AGENCIES, WHICH PASSED ACCREDITATION

Now it will be allowed to use services of personnel lease only in limited cases, namely:

- for the purposes of personal service for providing assistance in housekeeping (for individual, who is not a sole proprietor);
- for the purposes of temporary fulfillment of obligations of absent employees, who reserve their place of work (for sole proprietor or legal entity);
- for the purposes of carrying out work related to a priori temporary (up to 9 months) extension of production or volume of services rendered (for sole proprietor or legal entity). If the number of employees engaged in such case exceeds 10% of average number of employees, decision on the execution of personnel lease contract with the employment agency should be made taken into the account opinion of the elected body of the primary trade union organization.

Subsequently, it is prohibited to use services of private employment agencies, even duly accredited, on a constant basis.

Individuals and legal entities, which or who are clients of employment agencies (as defined in the Labor Code of the Russian Federation, the receiving party), bear subsidiary liability on employer's obligations arising under labor relations with employees. Subsidiary liability is also stipulated on employer's financial obligations to an employee.

Besides private employment agencies, legal entities, including foreign legal entities, are allowed to render services for personnel lease to the following categories of clients:

- legal entities affiliated in respect of the assigning party;
- joint-stock companies, if the assigning party is the party of the share agreement on the execution of rights confirmed by shares of such joint-stock company;
- legal entity, which is a party of the share agreement with the assigning party[2].

Organizations and sole proprietors using outstaffing services were given one year and a half, which passed from the date amendments introducing prohibi-

1. Article 341.1 of the Labor Code of the Russian Federation as revised under Federal Law No. 116-FZ On the Introduction of Amendments to Certain Laws of the Russian Federation dd. 05.05.2014.
2. Subparagraph 2 Paragraph 3 Article 18.1 of Law of the Russian Federation No. 1032-1 On the Employment of Population in the Russian Federation dd. April 19, 1991.

tion on agency labor were published until enactment of prohibition, for the revision of approach to staffing. Since January 1, 2016 relations between employees and employers will be built following new rules.

Bankruptcy of Citizens

Application of legislative provisions on bankruptcy has started since October 1, 2015. Arbitration courts instead of general jurisdiction courts, as it was initially planned, will recognize indebted citizens as bankrupts. Rules for recognizing citizens as bankrupts apply also to sole proprietors, but with a number of special aspects[3]. For example, for the purposes of settling the claims of creditors property of the indebted sole proprietor is subject to sale following the same procedures as the property of legal entities.

A citizen, judgment creditor and authorized body (for example, the Federal Tax Service) are entitled to refer to court with application on adjudication of the citizen in bankruptcy. Such application is accepted by the court, if claims against the debtor constitute not less than 500 000 Rubles, and they are not settled within 3 months from the due date of their fulfillment[4]. A citizen is recognized insolvent provided at least one of the following circumstances takes place:

- citizen suspended settlement with creditors, it means suspended fulfillment of mature financial obligations;
- more than 10% of the aggregate amount of the citizen's mature financial obligations are not fulfilled by him/her within more than 1 month from the day, when such obligations and (or) liability is due;
- the size of the citizen's indebtedness exceeds the cost of his/her property, which includes rights of claim;
- there is an order on the termination of enforcement proceedings due to the fact that the citizen has no more property to levy execution upon.

In cases on the bankruptcy of a citizen participation of a financial receiver, who is subject to court approval, is mandatory.

The arbitration court puts claims of the citizen's creditors on the creditors' register following the same rules as at the bankruptcy of legal entities[5]. Creditors may lay claims within 2 months since the date of publication of communication on the acknowledgement of the application on recognizing the citizen a bankrupt reasonable.

At consideration of case on bankruptcy of a citizen the following procedures may apply: debt restructuring, sale of property and amicable settlement. The time period for the implementation of the citizen's debt restructuring plan cannot exceed 3 years[6].

The court makes judgment on the acknowledgement of the citizen a bankrupt, if:

- the citizen, judgment creditor and (or) authorized body did not submit the citizen's debt restructuring plan within the time period specified in the law;
- meeting of creditors did not approve the citizen's debt restructuring plan;
- the court cancelled the citizen's debt restructuring plan;
- proceedings on case on bankruptcy of a citizen are renewed if it is revealed that the citizen concealed property or unlawfully transferred it to third parties; or if the citizen breaches terms of amicable settlement.

If the court makes judgment on recognizing the citizen a bankrupt, the court makes judgment on the introduction of procedures for the sale of the citizen's property. Property, which the execution cannot be levied upon in accordance with the civil procedural law, is excluded from bankruptcy assets. Citizen's property is subject to sale by tender.

Within 5 years from the date the citizen is recognized a bankrupt, he/she is not entitled to undertake any obligations under credit contracts and (or) loan agreements without specifying the fact of his/her bankruptcy.

As for now, cases of implementation of procedures for the bankruptcy of citizens are few. It appears that the new legal institution will be able to provide significant benefit to citizens on the edge of insolvency. Now such citizens have opportunity to settle debt matters with each creditor within single procedure. Whether bankruptcy of a citizen is beneficial for other party of the proceedings, creditors, depends solely on the financial position of a certain debtor: his/her property assets, family status and total number of claims on the register. One way or another, procedure for bankruptcy of citizens will still need to prove its efficiency.

3. Paragraph 3 Article 213.1 of Federal Law on Insolvency (Bankruptcy).
4. Paragraph 2 Article 213.3 of Federal Law on Insolvency (Bankruptcy).
5. Paragraph 2 Article 213.8 of Federal Law on Insolvency (Bankruptcy).
6. Paragraph 2 Article 213.14 of Federal Law on Insolvency (Bankruptcy).

ALL ATTENTION TO INCOME TAX

Svetlana Sviridenkova
Specialist
Audit Practice
Korpus Prava (Russia)

New 2016 gave us quiet a lot of changes in the tax law and, unfortunately, mainly to the disfavor of taxpayers.

Thus, the Tax Code underwent serious alterations in the part of income tax. Introduction of a new quarterly statement form is one of such alterations.

So the most important document concerning most employers is Order of the FTS No. MMB-7-11/450@ dd. 14.10.2015. By this order the FTS approved the form for the calculation of the income tax estimated and paid by tax agents (form 6-NDFL), which since January 1, 2016 employers should quarterly submit to tax authorities.

Probably, the only positive aspect is that the Calculation represents summarized data on all individuals (amounts of accrued income and withheld tax on a cumulative total from the beginning of the tax period) instead of "personalized" account on each employee.

Calculation of income tax should be submitted to tax authorities electronically by telecommunication network. Except for employers, which have no more than 25 people employed and which can still submit statements in hard copy. Violation of statement form will result in penalty in the amount of 200 Rubles.

The deadline for the submission of quarterly Calculation of income tax to tax authorities is the last day of the month following the report period, it means April 30, July 31 and October 31.

The legislator in particular worked hard in respect of liability of taxpayers (tax agents) for non-performance of their obligations regarding submission of Calculation of income tax to tax authorities. The illustrative table 1 is provided below.

However, the tax agent submitting inaccurate information to tax authorities is released of liability, if he/she independently reveals errors and submits to the tax authority revised documents prior the moment the tax agent learns on the detection by the tax authority of inaccuracy of information contained in submitted documents. It means no penalty will be imposed for the submission of altered calculation.

Russian organizations having separated subdivisions and making payments to individuals in their separated subdivisions should submit quarterly Calculations of income tax both at place of business and at place of business of such separated subdivisions.

Thus, in 2016 additional burden falls on employers — tax agents on income tax. Surely, this fact does not induce

Table 1.

Violation	Liability	Legal framework
Failure of the tax agent to timely submit calculation of income tax estimated and withheld by the tax agent to the tax authority at place of registration	Implies charging the tax agent with penalty in the amount of 1 000 Rubles for each full or not full month since the day specified for such submission	Paragraph 1.2 of article 126 TC of the RF
Failure of the tax agent to submit calculation of income tax estimated and withheld by the tax agent to the tax authority within 10 days after the expiry of the specified time period for the submission of such calculation	May imply suspension of all transactions of the tax agent on his/her bank accounts and transfers of electronic funds. Is performed on the decision of the head (deputy head) of the tax authority	Paragraph 3.2 of article 76 TC of the RF
Submission by the tax agent of documents containing inaccurate information to the tax authority	Implies charging with penalty in the amount of 500 Rubles for each submitted document containing inaccurate information	Article 126.1 TC of the RF

joy, however, generation of Calculation should not cause any particular difficulties.

Sticking to the topic of income tax, it's worth mentioning the important change concerning individuals, who own real estate. Amendments were introduced to the Tax Code at the end of 2014, but were enacted only since 01.01.2016.

Upon enactment of article 217.1 of the Tax Code of the Russian Federation the procedures for tax exemption at sale of real estate by individuals have changed, namely the minimum absolute time period for ownership of real estate object has changed.

As it was previously, income gained by an individual from the sale of real estate object is exempted of taxation provided such object was owned by the taxpayer within minimum absolute time period for ownership of real estate object and beyond. Until 2016, this period equaled 3 years without any additional terms.

Now minimum absolute time period for ownership of real estate object equals 3 years only for real estate objects satisfying at least one the following terms:

- the taxpayer obtained title to real estate object by way of inheritance or under the deed of gift from individual acknowledged as the family member and (or) close relative of such taxpayer in accordance with the Family Code of the Russian Federation;
- the taxpayer obtained title to real estate object by way of privatization;
- the taxpayer, annuity payer, obtained title to real estate object following the assignment of property under the life annuity agreement.

In all other cases the minimum absolute time period for ownership of real estate object equals five years.

Alterations introduced in respect of minimum absolute time period for ownership of real estate object curtail free disposal of real estate, which adversely affects taxpayers. However, it should be noted that legislators reserved the right of individuals to dispose of real estate obtained by way of inheritance, privatization or under the annuity agreement without any additional tax load.

In conclusion it should be mentioned that introduced amendments were quiet anticipated because actions on tightening of control for the payment of taxes are carried out for a long time already. Also, limitation of speculation with real estate by revision of requirements for tax exemption is quiet reasonable.

ALL ATTENTION TO INCOME TAX

IS A GOOD PLAN TODAY BETTER THAN A PERFECT ONE TOMORROW?

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

In November 2014, the law on controlled foreign companies, which was the target for criticism, discussions, comments and etc., was adopted. The Ministry of Finance tried as much as possible to clarify certain urgent matters arising among taxpayers.

In particular, there were two controversial explanations given on the matter of procedures for recognizing an individual a tax resident of the Russian Federation for the purposes of filing notification on the participation in companies and structures. In accordance with explanations of the Russian Federal Tax Service, individual may be recognized a tax resident of the Russian Federation in three cases:

1. If individual stayed in the Russian Federation for less than 183 days during the period from January 1 until December 31 of the calendar year.
2. If individual has permanent home in the Russian Federation.
3. If individual's center of vital interests is in the Russian Federation[1].

In its turn, the Russian Ministry of Finance gave the following explanation: for the purposes of filing notification on participation in companies and structures, tax residency is defined in accordance with the number of days spent by individual in the Russian Federation as of the date obligation to file notification arises[2].

Also, there were three controversial letters issued regarding the possibility for calculating profit of CFC on the basis of financial statement subject to voluntary (proactive) instead of mandatory audit (provided other requirements are followed):

- On April 30, 2015, the Ministry of Finance issued a letter, which said that provisions of the Tax Code of the Russian Federation did not stipulate possibility for calculating profit of CFC on the basis of financial statement provided the statement is confirmed by voluntary (proactive) instead of mandatory audit[3].
- On June 17, 2015, the Ministry of Finance issued a letter, which said that par. 1 Article 309.1 of the Tax Code of the Russian Federation may apply if the CFC performs audit voluntary[4].

1. Letter of the Federal Tax Service No. OA-3-17/87@ dd. January 16, 2015; Letter of the Federal Tax Service No. 3H-3-17/2536@ dd. June 30, 2015.
2. Letter of the Ministry of Finance No. 03-01-11/25295 dd. April 30, 2015.
3. Letter of the Ministry of Finance No. 03-03-06/25341 dd. April 30, 2015.
4. Letter of the Ministry of Finance No. 03-01-10/35077 dd. June 17, 2015.

- On July 27, 2015, the Ministry of Finance issued a letter, which said that profit of the CFC cannot be calculated on the basis of financial statement only because provision on mandatory audit is stipulated in the constituent documents of the CFC.

In respect of special aspects of taxation of controlling parties, in particular, whether income of controlling party, which is an organization, in form of monetary funds obtained at liquidation of the CFC is released of taxation, the Ministry of Finance issued the following explanation.

Monetary funds are deemed property. Full tax exemption is applied to monetary funds, including in any of the following cases:

- if monetary funds are expressed in foreign currency;
- if the amount of monetary funds exceeds the cost of shares of the CFC subject to liquidation de facto paid-up and documented by the applicable shareholder[5].

Taking into the account the above-mentioned, legislators resolved that there was an objective need to make alterations in the law.

In the middle of December of 2015 deputies of the State Duma S. E. Naryshkin, V. A. Vasiliev, I. I. Melnikov, V. V. Zhyrinovsky, M. V. Emelianov and A. M. Makarov introduced in the State Duma amendments to the Law On Controlled Foreign Companies (Draft Law No. 953192-6).

The said Draft Law was published on the Federal Portal of Draft Laws and offered highly anticipated amendments to the current rules for taxation of controlled foreign companies and their tax-exempt liquidation.

At this point, the State Duma passed the Draft Law in the first reading.

The main amendments can be provisionally divided in 4 blocks.

1. Procedures and deadlines for submission of notifications on participation in foreign organizations (bodies of foreign structures without formation of a legal entity) (hereinafter, the "Notification on Participation")

- Parties, which control the foreign structure without formation of a legal entity or are de facto entitled to income gained by such structure, are released of obligation to submit notification on participation in foreign organizations. It means that only incorporators of foreign structures will be obliged to submit notifications on participation. Beneficiaries or other parties should not have such obligation.
- It is specified that, if a party participates in a foreign organization using the structure without formation of legal entity (or other legal entity, which does not have capital or fund), in respect of which such party is deemed a controlling party, such participation is also taken into the account at determination of equity in the said foreign organization.
- The current revised Tax Code of the Russian Federation did not govern procedures for the submission of notification on participation, when as of the date of occurrence (amendment of equity) of participation individual was not a tax resident of the Russian Federation, but following the results of the calendar year acquired the status of the Russian tax resident. The Draft Law specifies that in such case notification on participation should be submitted until February 1 of the year following the said calendar year. However, for the purposes of submitting notification, equity and the fact of existence of such foreign structure incorporated by such party is determined as of December 31 of the said calendar year.

Thus, gaps in current requirements to procedures and deadlines for submitting notifications on participation are eliminated.

2. Grounds for Acknowledgement of Parties Controlling a Foreign Company

In particular, they will not include those participating in the CFC through Russian public companies. "Due to the transparency of statements and activity" of public companies, acknowledgement of "high-ranking" parties as controlling foreign subsidiaries after full disclosure of information is unreasonable, reads the explanation note.

Acknowledgement of the managing party of the foreign investment fund (unit fund or other form of collective investments) a tax resident of the Russian Federation, as well as the fact of performance by such managing party of activity related to management of assets of such fund (company) in the territory of the Russian Federation per se do not constitute grounds for recognizing such fund (company) as controlled foreign company, for which the said managing party is the controlling party.

3. Procedures for the Calculation of taxable profit of the CFC

Profit of the CFC may be calculated on the basis of its financial statement provided one of the following terms is observed:

1. Permanent location of the CFC is a foreign state, which has an international treaty on taxation executed with the Russian Federation, except states (territories), which do not exchange information with the Russian Federation for taxation purposes.
2. Auditor's report for the report financial period does not contain negative opinion or rejection of opinion expression. However, it is allowed to use results of both mandatory and voluntary audit of the said statement. Thus, procedure for calculation of retained profit of the CFC is significantly simplified in most cases.

Income of a taxpayer being a controlling party in form of dividends received following the allocation of profit of the CFC is exempted of taxes provided such profit was specified by the taxpayer in tax returns in form 3-NDFL subject to supporting documents. Please, be aware that previously the Ministry of Finance issued explanation stating the following: the Tax Code of the Russian Federation does not have provisions on tax exemption for dividends paid from the profit of the CFC subject to taxation on behalf of the controlling party. This issue will be analyzed in course of improvement of the tax law of the Russian Federation[6]. Thus, the existing problem of double taxation of income of a taxpayer being a controlling party is eliminated.

4. Tax-exempt Liquidation of a Foreign Organization (Termination of Foreign Structure)

It is proposed to extend discount on tax-exempt liquidation of a foreign organization (termination of a structure without formation of a legal entity) until January 1, 2018. However, if decision on liquidation of the CFC is made prior January 1, 2017, but liquidation procedure cannot be completed until January 1, 2018 due to limitations set forth in the personal law of the CFC or due to CFC participation in court proceedings, provisions on tax-exempt liquidation will apply until termination of such limitations or court proceedings.

5. Letter of the Ministry of Finance No. 03-03-06/20280 dd. April 9, 2015.

6. Letter of the Ministry of Finance No. 03-08-05/22683 dd. April 21, 2015.

Individual being a controlling party does not have income in form of material benefit, in case of acquisition from the CFC of securities at their documented cost registered by the CFC, if in respect of such CFC decision on liquidation is made and liquidation procedure is completed until January 1, 2018 (in some cases this period may be extended). In case of further sale of such securities, the received income may be decreased by the amount of de facto made expenses defined as the cost of such securities as of the date of transfer of title to the said securities, but not exceeding their market value as of such date.

Thus, additional opportunities for business restructuring are granted.

Also, the said draft law introduces separate amendments, which eliminate inaccuracies revealed during the first months of validity of new taxation rules for the profit of the controlled foreign company, and are intended to neutralize some existing opportunities for the avoidance of Russian taxation rules. In particular:

- elaboration of procedure for independent acknowledgement of residency and regulations related to such acknowledgement;
- elaboration of technical controversies between Article 232 of the Code in part of elimination of double taxation and provisions of Article 309 1 of the Code;
- elaboration of separate provisions related to application of provisions of international treaties for the avoidance of double taxation in respect of parties de facto entitled to income received in form of dividends from the Russian organization (Article 312 of the Code);
- elaboration of provisions of Articles 23 and 386 of the Code stating that obligation on the submission by the foreign organization of information on its members arises, if it beneficially owns precisely real estate;
- elaboration of transitional provisions in part of threshold values of profit of the controlled foreign company: profit of the controlled foreign company should be above stated threshold. In the current version the word “above” is absent, which may be understood as the amount of profit of the controlled foreign company should be equal to threshold value.

Please, be aware that by the beginning of introduction of the Draft Law for consideration in the State Duma of the Russian Federation or during readings the text of the draft law may undergo significant changes.

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? What is the amnesty of capitals? Why should we file declarations? Whether every taxpayer is to be granted amnesty? Which liability is foreseen, if one does not file a declaration?

Yana Karausheva
Junior Lawyer
Tax and Legal Practice
Korpus Prava (Russia)

The amnesty of capitals is an exchange operation offered by the state to its citizens. The information on the assets should be exchanged for the guarantees of release from criminal and administrative liability, as well as from liability for tax and currency violations. One can assess whether this is an even exchange only being aware of the circumstances of each particular situation.

In 2015, plenty of mandatory requirements were introduced, which bind the residents of the Russian Federation to disclose information on external assets: the notice of participation in foreign entities, the notice of controlled foreign entities, the notice of cash flow on accounts (deposits) in foreign banks. It is obvious that all these innovations pursue the only purpose: collection of information on the assets, the income on which has not been included into the tax declaration. Possession of such information increases the chances of a tax authority on providing the evidential basis for prosecution cases.

It is expedient to be granted amnesty when there is a risk that, as a result of analysis of available information and cooperation with tax authorities of foreign states, the Federal Tax Service of Russia will have weighty "compromising material" against a taxpayer. However, one must keep in mind that amnesty applies to the acts committed before January 1, 2015, and the flow of information on external assets flooded into the tax authorities after this date already, therefore, it is very difficult to gather information on the taxpayers' income for the prior periods (the years 2013–2014).

The amnesty of capitals is a voluntary matter, and before taking a decision on disclosing information, one should think it over prudently. Indeed, along with getting the guarantees of release from liability for the prior periods, one may "put under fire" the deals and transactions not covered by the amnesty.

There is no liability as such for failure to file the amnesty declaration; indeed, this is the taxpayer's right, and not its duty. As a kind of liability, we may call the regret concerning lost opportunity to be forgiven in case the punishment finally reaches the taxpayer.

? From what will the filed declaration save within the framework of amnesty (liability/arrears)? Can a taxpayer trust the guarantees set out in the Law? For what one may be brought to liability when filing a declaration? Can the information contained in the declaration do harm in the future?

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

Depending on the objects declared, the declaration filed within the framework of amnesty can release the declarant from the following types of liability:

- Criminal and administrative liability. Only so-called "currency", "customs" and "tax" articles of the Criminal Code of the Russian Federation and Administrative Offences Code of the Russian Federation.
- Tax liability. Filing the declaration releases from liability for any tax violations, if such violations relate to acquisition (formation of the sources of acquisition), use or disposition of property and (or) controlled foreign companies, the information on which is set out in the declaration, and (or) opening of, and (or) crediting money to the accounts (deposits), the information on which is included in the declaration. Besides, the Tax Code sets forth impossibility of collecting the arrears from the taxpayer, if the latter is released from tax liability for failure to pay a tax in connection with filing a special declaration.

We believe that there are no reasons not to trust the guarantees stipulated by the Federal Law, but all those guarantees are valid only if the acts, with respect to which they are provided, were committed by the declarant and (or) formal property owner before January 1, 2015. Thus, if the declarant commits unlawful acts using the undeclared assets of accounts in future, such acts will be subject to respective liability, and no guarantees concerning the acts committed after 01.01.2015 will be valid. This being the case, the information contained in the declaration can do harm to the declarant in future in case of committing unlawful acts with the objects declared.

? Is it necessary to declare brokerage and investment accounts, as well as the securities placed there?

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

Within the framework of the Law on the amnesty of capitals, the declarant has the right to provide, among other things, the information on the accounts (deposits) opened with the banks located outside the Russian Federation. This concerns the accounts (deposits) in foreign currency and in the currency of the Russian Federation.

This being the case, it should be noted that the brokerage accounts are intended for carrying out of settlements by the brokers in broker operations relating to investments into securities and performed om the basis of brokerage agreements concluded with customers. The special brokerage accounts are credited with the money of the customers transferred by them to a broker for being invested into securities, as well as with the funds received by the broker for the transactions with securities made on the basis of brokerage agreements with the customers. As a matter of fact, the brokerage account is not considered to be the customer account, but is a form of independent record-keeping for operations performed by the broker for each separate customer. Thus, an individual cannot declare the brokerage account.

Alongside with that, within the framework of the Law on the amnesty of capitals, the declarant can provide information on the securities being in its actual ownership. But this being the case it is necessary to keep in mind that in that case it will be vecessary to indicate in the declaration the information on each security, in particular, the name and registration address of the issuer, the nominal value, the amount etc.

The specific character of investment accounts is that they represent the hybrid of an individual's operating account and the brokerage account. Such account can be declared.

? What property can be declared within the framework of amnesty? Is it possible to declare the money, the withdrawn assets, the closed accounts and the assets received after such closing/withdrawal?

Irina Otrokhova
Lawyer
Corporate Services
Korpus Prava (Cyprus)

The Federal Law No. 140-FZ dated June 08, 2015 "On voluntary declaration by individuals of assets and accounts (deposits) in banks, and on amendments to certain legislative acts of the Russian Federation", the so-called "Law on the amnesty of capitals" (hereafter — the "Law"), which became effective, resulted in huge excitement and raised many questions from Russian owners and businessmen. One of them concerns information on the property subject to declaration. Despite the list of the property, the information on which can be declared, is given the Law, the declarants are often interested in such questions as:

- Can we declare the information on cash funds?
- Can we declare the information on withdrawn assets and closed accounts?

So, let's take a look at the list of information set by the Law, which the declarant can indicate in the declaration filed by him:

1. On property (land plots, other real estate objects, vehicles, securities, including shares of stock, as well as participatory interests and equity units in statutory (share) capitals of Russian and (or) foreign entities).
2. On controlled foreign companies, in relation of which the declarant is the controller (if the grounds for recognition of a foreign company or foreign structure without incorporating a legal entity as the controlled foreign company are not related to direct participation of an individual in the capital through possession of shares of stock, shares and (or) equity units in statutory (share) capitals of such companies).
3. On accounts (deposits) opened by an individual with banks located outside the Russian Federation, on opening and change of the details of which the individuals have to notify the tax authorities at the place of their registration.
4. On accounts (deposits) with banks, if the declarant is recognized a beneficiary owner with respect to the owner of an account (deposit).

It should be noted that the Law provides declaration only of the property and assets that are in possession of the declarant as of the date of filing the declaration to the tax inspectorate. The "Law on the amnesty of capitals" does not provide the opportunity of declaring the cash funds. As an alternative way out, the declaration of information on the accounts of a declarant and/or account of the company belonging to the declarant, to which the cash funds have been transferred. However, one has to remember that the guarantees of release from liability stipulated by the Law are effective only with respect to the declarant's acts committed before January 01, 2015.

? What are the recommemdations for the taxpayers with the following position: I haven't stolen anything, I received all my income legally..., but my assets have been acquired through a third party for those honestly earned money, from which the taxes have been paid.

Irina Kocherginskaya
Managing Director
Tax and Legal Practice
Korpus Prava

As declaration of the assets within the framework of amnesty is a voluntary matter, then, certainly, thinking, whether to file declaration or not, is first of all necessary for those, whose assets have been acquired for undeclared income in order to be released from tax and criminal liability for the tax crimes committed. From this point of view, the position of the taxpayer "I have declared all income, which then transferred abroad, that's why I don't need any amnesty" does have the right to exist. But before giving the unambiguous answer, whether such taxpayer needs declaration or not, it is necessary to thoroughly trace the route from that declared income to the asset that have been finally acquired for such income. And if the taxpayers that have paid the taxes from the received income are of frequent occurrence, only the very few among them can exactly support the money flow with any documents. Unfortunately, the major part of the taxpayers didn't transfer the money directly from their operating account, where such income was received, to the account of the seller of the assets. Most often the following situations were simulated:

- Version 1: the taxpayer cashed in the money, transferred it abroad and there placed to its account, to the account of its company, or to the account of a third party, maybe, even directly to the purchaser's account. What does this action mean? That the honest taxpayer didn't make any tax violation, but violated currency and customs legislation.
- Version 2: the taxpayer transferred the money abroad through a bank, but such transfers cannot be confirmed by any documents. In such case the taxpayer, most probably, violated the Law on income laundering, and probably, committed some other violations, all depends on the quality of transaction.
- Version 3: the taxpayer granted the loan to its foreign company that acquired the assets. This version, as a matter of fact, is not connected with violation of the law by the taxpayer, but in such situation the taxpayer must understand that the asset acquired belongs not to him, but to its controlled foreign company, and the taxpayer has already to observe other regulations of the Tax Code of the Russian Federation.

And as the Law on amnesty provides release from liability not only for tax violation and crimes, in all the above mentioned or similar cases the honest taxpayers should think over amnesty.

Thus, we always ask each our customer that is convinced that he "did not steal anything, and received all income in a lawful manner" the following question: "And can you confirm by any documents the flow of the money from your operating account to the seller's account?" If not, then it means that you cannot prove that the asset has been acquired for the same honestly earned money. In the opinion of inspection authorities, this will be other money, and, as a consequence, other income. That's why here is our advice for all of you: you have to assess your situation thoroughly before taking a decision, whether you need amnesty or not.

? If the money or property of the taxpayer belongs to a foreign company, what has the taxpayer to declare — the company, the company's account, each separate asset?

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

It's unlikely that any tax consultant will give anunambiguous answer to this question, as well as to any other question relating to volunatary declaration by the citizens of their property (simply speaking — amnesty of capitals). The reason for that is uncertainty and lack of understanding how the regulations of the Law No. 140-FZ dated June 08, 2015 will be apllied in future.

First of all it is nessecary to note that the taxpayer must not and doesn't have to declare its property, its account or amy other assets. Such declaration stipulated by the Law No. 140-FZ is just a voluntary matter.

Indeed, if the taxpayer decided to declare its assets, then the primary objective it pursues is using the guarantees provided by the Law on the amnesty of capitals.

As it is seen from the text of the Law, the main guarantees provided for the declarant are the opportunity to release the declarant from all types of liability, as well as release from collection of tax arrears. As it appears from the rules of the Law, the declarant is released from liability for violations releting to acquisiton (formation of the sources of acquisition), use or disposition of property and (or) controlled foreign companies, the information on which is set out in the declaration,and (or) opening of, and (or) crediting money to the accounts(deposits), the information on which is included to the declaration.

The literal interpretation of this rule means that indication of information on the controlled foreign company in the declaration on amnesty is to be the sufficient ground for achieving the goals intended, as acquisition of the assets in the name of the controlled company is covered by the denoted type of violation. Therefore, it is not necessary to declare the assets belonging to the controlled companyseparately.

Besides, if, none the less,the declarant wishes to declare such property, it is necessary to remember that it is possible to indicate only the information on the property, the owner or real owner of which is the declarant. The real ownership means exercizing by the formal owner of the owner's rights on behalf and in the interests of the beneficiary (real owner) on the basisof formal property ownership agreement.

Thus, in the event the assets belong to the controlled company, and there is no formal property ownership agreement with respect to such assets, the declarant will not be able to include the information on such assets into the special declaration.

? What can one answer to the taxpayer who has the following position: “I am not going to return money to Russia, do I have to file a special declaration?”

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

As it is known, now the lawyers often have opposite opinions concerning this matter. I support the opinion that, first of all, here we should take into account not the fact whether the taxpayer is planning to return money to Russia, but the way this money was received. We see several grounds, which can make you consider that it is necessary to file a special declaration:

1. The money being abroad was received from the sources in Russia.
2. The taxpayer received money from the sources established abroad, and this money came from the accounts controlled by the taxpayer.
3. The taxpayer is not sure that the money mentioned above have been received observing the regulation of Russian tax and currency legislation.

Besides, there is a criminal liability for certain types of tax violations, and this means that a mistake in making the decision may result in conviction, and sometimes in imprisonment of the taxpayer.

The next question one should ask himself is to what extent the risks are real? If after the moment of making a controversial operation the period of prosecution (such period may vary depending on the amount of the money transferred) expired, it is not necessary to file an application.

As a conclusion, I would like to remind you that as long as the practice of applying the special declaration as protection of the taxpayer from tax, administrative and criminal liability is not drawn out, the contradictions in the lawyers’ recommendations would remain. This being the case, the only recommendation that is worth to be given to the taxpayer, is: “Analyze the things, which take place, adequately, and act depending on how high the probability to detect the violation is”. There is no correct answer to this question yet.

? Can we indicate the property acquired in 2015 for the money earned in the previous years in the special declaration?

Tatiana Frolova
Lawyer
Korprus Prava Private Wealth

After the President’s Message in 2014, when the talks on future amnesty of capitals began, nobody affirmed that amnesty would extend not to all assets of the citizens willing to disclose their capitals, and only to those, which will be in their ownership as of certain date.
It would be logical to suppose that amnesty will cover all property and accounts that are in the ownership of individuals as of the moment the Law on amnesty enters into legal force; however, the legislator chose another way.

In this Law, it is clearly indicated that the guarantees provided by it cover the assets, which are in the ownership of the declarant or formal owner as of beginning of 2015.

Thus, the citizens that decided to cash in and close their foreign accounts in order to avoid the obligation to file the cash flow reports for them, which was introduced in 2014 and was to be effective starting from 2015, and after that (in 2015) acquired real property or securities for such money, have lost the opportunity to be granted amnesty for such assets.

At the same time, we should remember that individuals do not have to inform relevant authorities on acquisition of the assets outside the Russian Federation. As a consequence, if the real property or securities were acquired in 2015, there is no need to inform anybody thereof, and today the governmental authorities do not have any other opportunities to receive such information, except for getting it directly from the individuals. Thus, the authority, having set the date, as of which the assets must be in the declarant’s ownership for the purposes of receiving guarantees under the Law on Amnesty, by its own efforts excluded from that list the assets acquired by individuals in the first half of the year 2015. Well, this is the choice of our legislator.

? How legislation on Controlled Foreign Companies is related to legislation on amnesty? What the taxpayer has to file anyway?

Artem Paleev
Managing Partner
Korpus Prava

The question "How legislation on Controlled Foreign Companies is related to legislation on amnesty?" or "I have filed the notice of the Controlled Investment Company; as far as I see it, I do not already have to file declaration on amnesty?" deserves the title "The question of the year".

The confusion in the minds of taxpayers appeared, first of all, because both of these innovations (both the regulations of the Tax Code of the Russian Federation and the Law on amnesty) are given, including the mass media, within the framework of the uniform process – deoffshorization. However, these laws have different purposes and different targets, whuch means that performance or non-performance one of them has no influence on performance or non-performance of the other one.

Well, the legislation on Controlled Foreign Companies. First of all, the taxpayers shall understand that the requirements set by the legislation on Controlled Foreign Companies are the duties of the taxpayers, which they must observe. Second, it is important to understand what this legislation struggles with. It struggles with such phenomenon as deferred tax payment, that is with situations when a taxpayer has actually earned income, but for some reasons (they may be both lawful and unlawful) decided not to receive to its operating account and, as a consequence, not to pay the tax, but decided to save the received income or to reinvest it. Third, the legislation on Controlled Foreign Companies covers future periods and extends to the acts of a taxpayer that appeared starting from 01.01.2015 and will be performed by this taxpayer earlier. An finally, the fact of filing the declaration on amnesty in no way affects the necessity to perform the duties arising from the legislation on Controlled Foreign Companies.

And what's about legislation on amnesty? Unlike the Law on Controlled Foreign Companies, the Law on amnesty:

- Gives the taxpayer the right to file a declaration on its assets, that is, it does not imply any obligations for the taxpayer. The taxpayer that thinks that, while acquiring the assets, it committed tax, customs or currency violation or crime, may file the declaration within the framework of amnesty.
- Covers prior periods and applies to legal relations that appeared before 01.01.2015, i.e. it concerns the maters of what has already been committed by the taxpayer.
- Does not struggle with any violations, which will arise now or in the future, but provides for the taxpayer with release from liability for the acts committed in the past.

And, what is most important, filing the declaration within the framework of amnesty can not in any way affect the obligation of the taxpayer to observe the requirements of the legislation on Controlled Foreign Companies.

Thus, the taxpayer shall remember one thing: if it has a foreign or controlled foreign company, it has to file the respective notices. If such foreign company has any undistributed profits, the taxpayer has to increase its tax base for the amount of such undistributed profits. If the taxpayer showed its Controlled Foreign Company in the declaration on amnesty, it has in any way to perform the duties mentioned above. And whether to file the declaration within the framework of amnesty or not is the personal matter of any person. This depends on the circumstances and the extent of comfort, which the taxpayer enjoys at the thought of information disclosure.

TRENDS IN THE RUSSIAN JUDICIAL PRACTICE ON TAX DISPUTES FOLLOWING THE RESULTS OF 2015

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

For most taxpayers 2015 was quite eventful and crucial. This year, a lot of amendments were introduced to the tax law, which on one part aimed at crackdown in relations between the state and the taxpayer (adoption of law on deoffshorization, on actual income recipient, on control over accounts of taxpayers, on the introduction of liability for individuals to submit statements on movements on foreign accounts), and on the other part, during the transition period Russian taxpayers have been granted opportunity to voluntarily notify on their foreign property in exchange for guarantee of relief on liability for tax violations (related to formation of sources of acquisition of foreign property), and also of collection of tax arrears ("Capital Amnesty").

But despite that, recent amendments in the tax law, none the less, are not intended to ease the situation of taxpayers and relax control of the state.

Unfortunately, as the analysis of judicial practice on tax disputes in 2015 reveals, most key judgments were also made against taxpayers. Thus, this year judicial authorities did not add honey to the barrel of turmoil and stress of Russian taxpayers.

This article invites you to have a look at key judgments and main trends in the development of Russian judicial practice in 2015.

Trend No. 1: Russian courts begin to apply concept of actual income recipient introduced in the Tax Code of the Russian Federation since 01.01.2015 to the full extent

Concept of actual income recipient lies in the following: if international treaty of the Russian Federation on taxation stipulates application of reduced tax rate or release of taxation in respect of income sourced in the Russian Federation for foreign parties de facto entitled to such income, for the purpose of enforcement of such international treaty a foreign party shall not be deemed de facto entitled to such income, if it has limited authority in respect of disposal of such income, carries out mediation functions in respect of such income for the benefit of other party without performing any other functions and without accepting any risks, directly or indirectly paying such income (fully or partially) to such other party, which in case of direct receipt of such income sourced in the Russian Federation would not have been entitled to apply the said

provisions of the international treaty of the Russian Federation on taxation[1].

Tax authorities (and also courts) most actively apply this concept to transactions on payment to the Russian organization of indirect income (dividends, interest, royalties) to the benefit of a foreign company registered in the state having tax treaty with the Russian Federation. In such case inspection authorities and courts recognize a foreign company as conduit and de facto not entitled to gained income, at the same time denying Russian organization to apply reduced rates of withholding tax, and also to recognize the said payments in expenditures at income tax base formation by the Russian company.

In this situation, Oriflame Cosmetics case became the most illustrative example. In this case the Russian company entered with its parent company in a number of contracts for the transfer of exclusive rights, which in its turn executed similar contract with its parent company.

By paying to the foreign company license fee (royalty), the Russian company:

- as tax agent withheld VAT on the said amounts and subsequently declared for deduction paid VAT amounts;
- recognized royalty amounts in expenditures at income tax base formation.

The scheme outlines it as follows (Fig. 1).

Tax authority additionally charged from the company the value added tax (withheld by it as a tax agent at payment of royalty and declared for deduction), and also income tax (due to the refusal to accept as expenditures amounts of paid royalties).

Courts dismissed the Company's claims in full[2]. On the basis of analysis of this case (more detailed analysis of this case was published in the previous edition) it appears that the said case was more like a show trial revealing general feeling and position of the state (including the legislator, law enforcer and controlling authorities) in respect of schemes of tax optimization aimed at the use of legal business structures with the goal of applying exemptions and concessions of international tax planning and of taking capital abroad. More likely, such position of the state in modern political and economic conditions is natural rather than unexpected.

Subsequent judgments made by courts on similar cases also indicate the intention of courts to follow the chosen path[3]. For example, in the case of Petelino Trading House the similar situation was considered (Fig. 2).

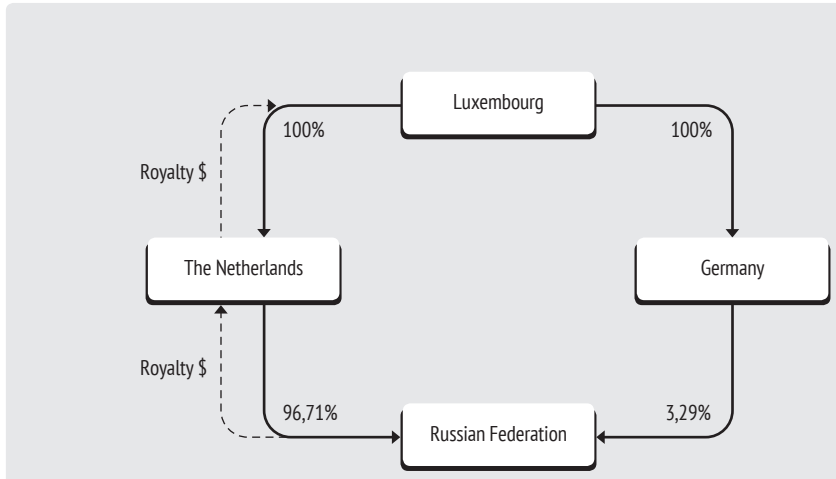

Fig. 1.

In this case the Russian company entered into the sublicense contract with the Cyprian company, which in its turn acquired license from the rights holder registered in the Bermuda.

However, the following circumstances provided the basis for the judgment of tax authority and the court:

- the rights holder (the Bermuda company), the licensee (the Cyprian company) and the sublicensee (the Russian company) are affiliates and comprise one group of companies according to the publicly available lists of affiliates;
- license and sublicense contracts were entered with minimum time interval;
- the cost of the sublicense contract exceeds the cost of the license contract by many times;
- existence of tax treaty between the Russian Federation and Cyprus and absence of such treaty between the Russian Federation and the Bermuda;
- the company had objective opportunity to enter into the license contract directly with the rights holder.

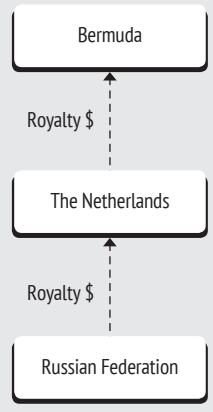

Fig. 2.

The said circumstances allowed the tax authority to arrive at the conclusion that the only goal of this scenario was gaining by the company of tax benefit by means of non-payment of tax on income received by foreign organization from resources in the Russian Federation withheld by the tax agent.

Trend No. 2: Practice at consideration of disputes related to "thin capitalization" is tightened

Experience has proven that debt financing holds key positions among other financing methods within holdings. When a foreign company grants a loan to the Russian affiliate, as a rule, it pursues several goals. First of all, it is an opportunity of operational financing of the company's activity when the company needs it. However, besides that, debt financing is also an effective tax tool, which allows regulating tax burden of the Russian borrowing company.

However, regarding application of the said tax tool the current tax law of the Russian Federation specifies certain limitations in part of accounting and taxation of interest profit on controlled indebtedness. Controlled Indebtedness (CI) is recognized as outstanding indebtedness of the Russian organization[4]:

- on debt obligations to the forezign company, directly or indirectly owning more than 20% of the authorized capital of this Russian organization;
- or on debt obligation to the Russian organization recognized as an affiliate of the abovementioned foreign organization;
- or on debt obligation, in respect of which such affiliate and/or directly this foreign organization acts as a surety, guarantor or otherwise is liable to secure fulfillment of debt obligation of the Russian organization.

1. Paragraph 3 Article 7 of the Tax Code of the Russian Federation.
2. Order of the Federal Arbitration Court of Moscow District dd. 11.06.2015 on case No. A40-138879/14.
3. See Judgment of Moscow Arbitration Court dd. 08.05.2015 on case No. A40-12815/15, left standing under Order of the 9th. Arbitration Appeal Court of Moscow dd. 04.08.2014 on case No. A40-12815/15.
4. Paragraph 2 Article 269 of the Tax Code of the Russian Federation.

Amount of which exceeds the borrower's own capital by 3 times (the difference between the amount of assets and the size of obligations) as of the last day of the report (tax) period at determining the maximum amount of interest to be recognized as expenditures (fig. 3).

However, during the last year the position of controlling and judicial authorities on this matter has significantly tightened. Thus, for example, controlling authorities reckon among other things that rules on controlled indebtedness should apply only at direct, but also at indirect dependence between the Russian taxpayer and loan recipient and the foreign lending company. That is why outstanding indebtedness on debt obligation of the Russian organization to the foreign "sister" organization is also recognized as controlled indebtedness.

This conclusion has been made by the Ministry of Finance of the Russian Federation[5] on the basis of Comments of the Organization for Economic Co-operation and Development (OECD) on the Model of Convention on Income and Capital Taxes, on the basis of which most states enter into treaties for the avoidance of double taxation. OECD Comments specify that for the application of "thin capitalization" rules it is not required for the borrower to be subsidiary of the creditor. For example, they both can be subsidiaries of the third party, together be part of one group of companies or holding controlled by such party and etc.

Approach set forth by the Ministry of Finance of the Russian Federation was also supported by arbitration courts at settlement of tax disputes in cases on controlled indebtedness. See, in particular: Order of the Arbitration Court of the North-Western District dd. 19.06.2015 on case No. A56-41307/2014; Order of the Arbitration Court of Moscow District dd. 13.04.2015 on case No. A40-41135/14; Order of the Arbitration Court of Moscow District dd. 27.02.2015 on case No. A40-30682/14.

Other important issue at consideration of cases of such category is the issue of controversy between provisions on controlled indebtedness (Article 269 of the Tax Code of the Russian Federation) and international tax treaties, which allow the taxpayer without any limit to take on account interest on loans granted

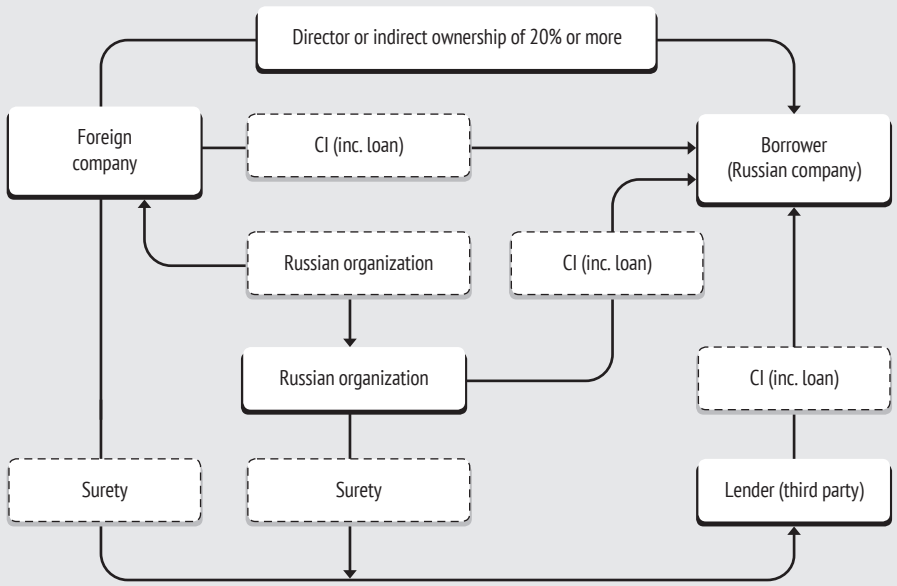

Fig 3.

5. Letter of the Ministry of Finance No. GD-4-3/10807@ dd. 22.06.2015.

by the foreign incorporator (non-discrimination principle). In recent years practice on this issue has also tightened significantly. If previously judicial practice was not the same and there were judgments made in favor of taxpayers (Order of the Federal Arbitration Court of the West Siberian District dd. 05.06.2008 on case No. A70-5054/2007, Order of the Federal Arbitration Court of Moscow District dd. 13.12.2010 on case No. AA40-138021/09), now courts come to the explicit conclusion that international tax treaties leave open possibility of stipulating special taxation rules under the national law as means of struggle against minimization of taxation (Order of the Federal Arbitration Court of the Far Eastern Federal District dd. 13.02.2014 on case No. A04-1595/2013, Order of the Arbitration Court of the North-Western District dd. 19.06.2015 on case No. A56-41307/2014).

In this case, the culmination of judgments was Definitions of the Constitutional Court of the Russian Federation No. 1578-O dd. 17.07.2014, No. 695-O dd. 24.03.2015, in which the court arrived at the conclusion that thin capitalization rules are aimed at prevention of abuse in tax legal relations and existence of such requirements in the Tax Code of the Russian Federation does not mean that they stipulate other rules than those specified in international tax treaties.

Trend No. 3: Courts cease admitting the taxpayer's right to recognize royalties paid to the related company as expenditures

2014–2015 became crucial in practice of taxation of license fees (for the use of trademarks, patents, know-how and etc.).

If above we have discussed cases on taxation of royalty from the perspective of application of concept of de facto income recipient, in practice courts and tax authorities have also other issues arising, in particular, issue on economic feasibility of expenses in form of royalties.

For example, previously there was a quite popular scheme, following which foreign parent companies transferred to Russian subsidiaries under license contracts rights to use various corporate resources and methods applied within the holding (procedures for paperwork management, standards of work quality, by-laws, administrative information resources). The said rights were transferred as know-how or various technologies.

Initially the courts recognized the right of existence of such schemes, which is confirmed, for example, by case of Ekvant, LLC No. A40-36263/10, where a taxpayer managed to prove the actual value of acquired rights for technology (and thus economic feasibility of incurred expenses) and absence of interdependence between parties of the license contract. However, later the same taxpayer (Ekvant, LLC) did not manage to win in dispute with tax authorities at consideration of the same issue, but following the results of another time period (see Order of the 9th Arbitration Appeal Court of Moscow dd. 25.02.2015 on case No. A40-28065/13).

Tax authorities managed to win this time with the help of foreign colleagues, which submitted required information on the basis of numerous international requests, on the basis of which the tax authority and the court managed to arrive at the following conclusions:

- the rights holder did not acquire or create technology independently;
- the rights holder was a transitional element between the parent company and subsidiaries of the holding;
- the rights holder (as well as the licensee) did not pay income taxes due to losses carried over to future periods;
- other subsidiaries comprising the holding did not pay similar license fees for the use of technology.

The said conclusions provide the basis of judgment, which left standing the judgment of tax authority on denying the taxpayer to protect its rights.

Besides reviewed cases, other illustrative cases on significant tax disputes in 2015 can be emphasized (case of the

Russian representative office of Freshfields Bruckhaus Deringer on the possibility of recognizing expenses of the parent subdivision No. A40-3279/14, case of Sony Mobile Communications Rus, LLC on double taxation of insurance payments — Order of the Constitutional Court of the Russian Federation dd. 01.07.2015 No. 19-P), however within one article it is impossible to address and analyze all judgments.

As general analysis of recent judicial practice reveals, tax authorities securing the support of courts started to deal quite successfully with the most popular tools of tax planning used by Russian organizations recognizing them as "schemes". Also, special attention should be paid to the trend of rising quality and increase of information sources, which tax authorities started to use for the purposes of collecting proofs, in particular, widespread development of practice of international information exchange.

Due to this, we recommend taxpayers to carry out deep analysis of their economic activity to detect transactions, which may be recognized as risk-related in light of changing judicial practice.

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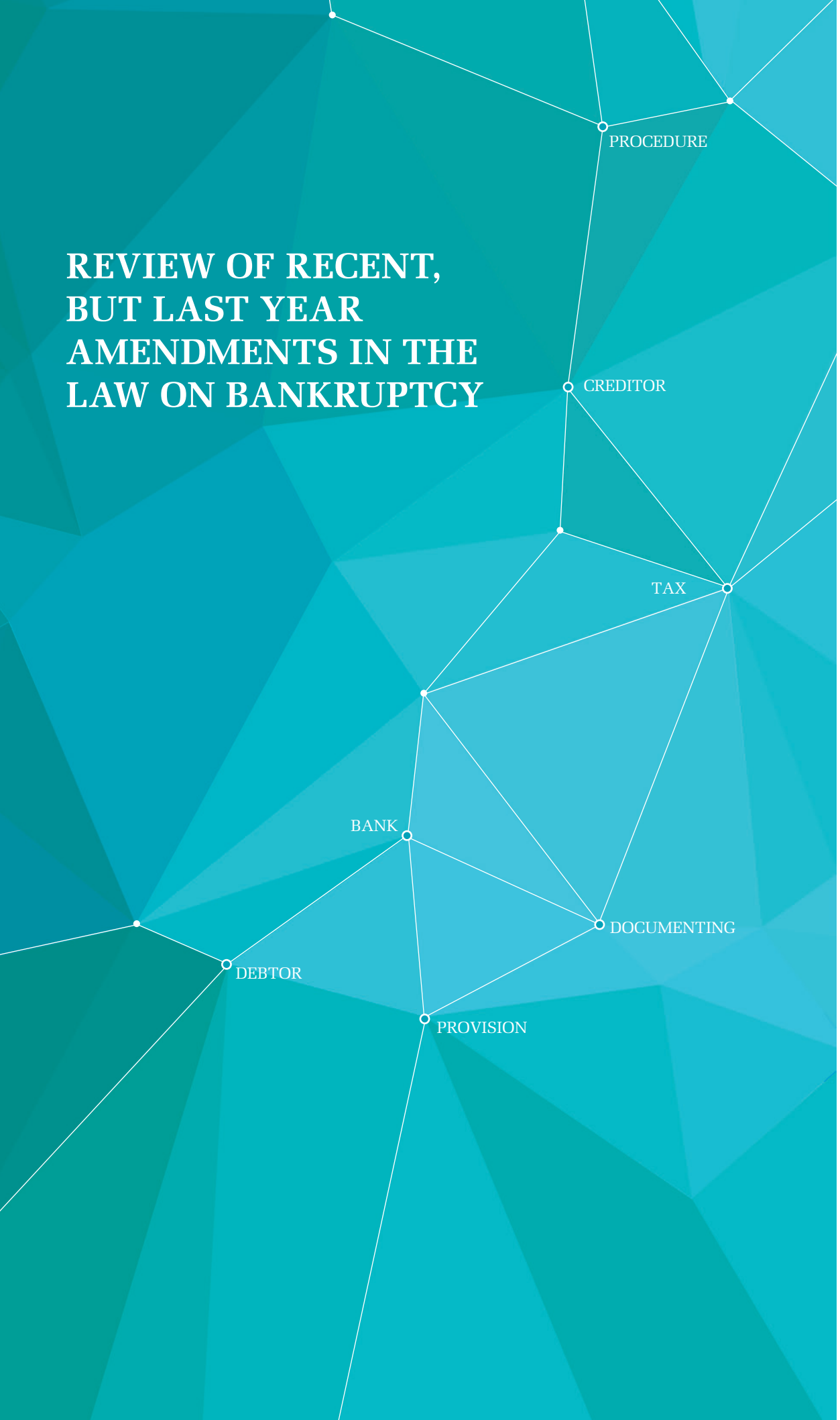

REVIEW OF RECENT, BUT LAST YEAR AMENDMENTS IN THE LAW ON BANKRUPTCY

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

Last year, yet another amendments to the Federal Law on Insolvency (Bankruptcy) were enacted. It was quite anticipated for many reasons. First of all, distinct increase of the number of bankruptcies, it is unknown whether we have hit the bottom of the crisis, but bankruptcy became a quite popular affair. For some it is inevitable end of business, for others it is a tool for getting rid of debts.

Secondly, bankruptcy procedure is rather complicated and multidimensional, whereby it is quite hard to provide at once efficient control for this process. The law was initially doomed to multiple revision, additions, fight against errors and inefficient solutions.

New version contains a number of significant amendments in the area of legislative control of bankruptcy procedures, which, in our opinion, should be emphasized.

Procedure for the assessment of creditors' claims has changed

The procedure for the assessment of contents and size of financial obligations and mandatory payments has changed. Previously, they were documented as of the date the petition on bankruptcy was filed to court. New revision stipulates assessment of financial obligations and mandatory payments as of the date the first bankruptcy procedure is implemented, if such obligations emerged prior the arbitration court ruling on acknowledging the debtor a bankrupt, but was declared after such arbitration court ruling.

The new development seems reasonable: quite a lot of time passes from the moment petition on bankruptcy is filed to court and until the debtor is declared a bankrupt, and at the same time the first bankruptcy procedure is implemented. During this period of time, the size of financial obligations may increase significantly, and it would be unfair to ignore such increase.

Critical amount for the commencement of bankruptcy has increased up to 300 000 Rubles

According to the previous version of the law on insolvency, proceedings on bankruptcy case could be initiated by the arbitration court provided the claims against the debtor being a legal entity constitute in total not less than 100 000 Rubles. New version increases this amount to 300 000 Rubles.

Important amendment lies in the fact that prior referring to the arbitration court the applicant (whether a creditor or a debtor) should publish notification on the intent to file application on the acknowledgement of the debtor as insolvent by incorporating it on the Unified Federal Register of Information on the Activity of Legal Entities 15 days prior referring to court.

Banks and tax authorities have been permitted to initiate bankruptcy procedure in respect of their debtors without court ruling

For initiating insolvency, banks no longer need to confirm indebtedness in court as all other creditors. Banks are entitled to refer to court with petition on bankruptcy from the date features of insolvency emerge in debtors.

Bodies authorized to receive mandatory payments (Federal Tax Service, customs and etc.) have been granted similar right to refer to court with petition on bankruptcy, if the debtor has indebtedness unconfirmed by court ruling. Yet, unlike banks, they cannot do this at once, but only in a month after the decision on indebtedness recovery is made by tax or customs authority.

This innovation will significantly simplify bankruptcy procedure in respect of their debtors for banks and tax authorities because previously they had to first pass, at least, two instances of court proceedings only to confirm the fact of indebtedness. Debtors, in their turn, are deprived of opportunity to overextend the process and delay the bankruptcy date.

Procedures for documenting voting results at meetings of creditors have been supplemented

Minutes of meeting of the committee of lenders should be drawn up in two counterparts, one is sent to the arbitration court not later than in five days from the date when the meeting of the committee of creditors was held, and the second is maintained by the party carrying out the meeting of the committee of lenders.

The following copies should be enclosed to the minutes:

- voting ballots (unless regulations stipulate other form of decision-making);
- materials given to members of the committee of creditors for information and (or) approval;
- documents proving due notification of members of the committee of creditors on date and place of the meeting of creditors;
- other documents at the discretion of the party carrying out the meeting of the committee creditors, or based on the decision of the committee of creditors.

Information on decisions made at meetings of the committee of creditors should be incorporated by the administrator into the Unified Federal Register of Information on Insolvency within three business days from the date such administrator receives minutes of the meeting of the committee of creditors.

Rights of receivers have been extended

Under the revised law, receivers will be able to request information not only about the debtor, but also about parties, which are part of the debtor's governing bodies, and also about the debtor's controlling parties. Also, the receiver will be able to request information on debtor's liabilities to state non-budget funds of the Russian Federation. These bodies should submit required information to the receiver within 7 days from the request date free of charge.

Receivers will also have the right to request information constituting business, trade and bank secret.

Under the decision of the governing body, alongside with the additional agreement on compulsory insurance of his/her liability the receiver should enter into the additional agreement on the insurance of the receiver's liability.

The debtor will be unable to choose the receiver

For those debtors who thought of using the bankruptcy procedure for getting rid of inconvenient creditors by way of different manipulations, this is the most unpleasant innovation in the law. Previously, the struggle between the debtor and creditors began prior the implementation of the first bankruptcy procedure. It was essential, who would be the first to refer to court with the petition on bankruptcy. The first to refer specified in the petition the nominee for the receiver, which, as a rule, the court approved. Thus, the struggle often came down to the situation, when both creditors and debtors sought to put in the helm "their" receiver and control through him/her the bankruptcy procedure for their benefit. Now debtors are deprived of opportunity to put in the helm "their" receiver, they have no right to specify in the petition on bankruptcy the last name of the receiver, they can only specify the self-regulatory organization (SRO), from which members the receiver should be approved (its title and address).

The receiver is defined by random selection and the SRO is selected the same way, when it is not specified in the debtor's petition. By introducing such selection procedure, the legislator seeks to remove impact of the debtor on the selection of the receiver and to approve independent receivers.

Grounds for refusal to approve the receiver have been defined

Ground for refusal will be deemed information that the receiver has no sufficient competence, good faith and independence for carrying out such procedure. Out of this definition it is not quite clear whether such information is provided only by the SRO or may be provided by other parties. However, even if there is such information, the receiver may be approved by court, but additional insurance (for the insurance amount not less than the size of the compensation fund of the SRO as of the last reporting date) will be required for this. In such case the size of possible payment out of the fund of the SRO will decrease from 5 to 1 mln Rubles.

The size of the compensation fund will equal 20 mln Rubles

The provision that the minimum size of the compensation fund should equal 28 000 000 Rubles has been removed.

Also, amendments concerned the size of compensation payments. Previously, the size of compensation payment could not exceed 25% of the size of the compensation fund of the SRO per one case of infliction of damage.

Now, the size of compensation payment cannot exceed 5 000 000 Rubles per one case of infliction of damage. If the nominated receiver was approved by the arbitration court, the size of the compensation payment cannot exceed 1 000 000 Rubles.

Rights of the debtor's employees at bankruptcy

Indebted organizations have new concerns. If previously at bankruptcy the most active enemies of the debtor were major creditors and tax authorities, now debtor's employees joined them. Earlier people, against who the debtor had salary indebtedness, had no right to refer to court with petition on bankruptcy, now they have been granted such opportunity, moreover, not only the current employees, but former, it means those who are not employed by the debtor as of the moment of referring to court with petition on bankruptcy. Moreover, the legislator has granted to employees opportunity to unify their claims and file joint petition on the acknowledgement of the debtor a bankrupt.

It may create serious difficulties for debtors, taking into the account that unfriendly creditors may easily use employees to initiate bankruptcy.

What rights have now been granted to employees (former employees)?

1. Debtor's employees have acquired the right to claim in the arbitration court to acknowledge their employer

a bankrupt.[1] Yet, employees can do that only having enacted court ruling. But taking into the account that in most labor disputes courts take the side of the employee and reduced period for court proceedings on such categories of cases, it would be no trouble to get such ruling.

2. Moreover, simplified procedures (i. e. without court ruling) for the inclusion of claims on payment of severance packages or salary to people, who work or previously worked under the labor contract, remain in respect of already initiated case on bankruptcy.
3. Indebtedness against employees should now be taken into the account by the debtor's management at defining bankruptcy features of the company[2].
4. If case on bankruptcy is initiated following the petition of an employee and afterwards it is revealed that the debtor has insufficient property to cover court and other mandatory expenses for the conduct of case on bankruptcy (for example, remuneration of the receiver), employee will be released of liability to cover them (expenses)[3].
5. The revised law specifies the seniority of current debt recovery to debtor's employees, who remained employed (or remain employed) as of the moment petition on the acknowledgement of the debtor a bankrupt was accepted. Such claims should be settled on a second-priority basis, and any other claims in this seniority should be excluded to prevent frauds on behalf of the management, receivers and other parties.
6. The representative of debtor's employees, the employee or former employee are now entitled to file application for pursuing joint liability on the debtor's controlling party, which includes head of the debtor. Grounds for pursuing joint liability are the same as for the cases of reference of other creditors with such applications[4].
7. Procedures for convening and carrying out general meeting of employees and election of representative of employees have been determined. Meeting of debtor's employees, former employees should be carried out not later than five business days prior the date, when the meeting of creditors is carried out. Obligation to convene a meeting of employees is placed on the receiver. However, if the receiver fails to perform such obligation, meeting of employees, former employees may be carried out by the person or people demanding such meeting, for example, employees themselves.
8. Services of the representative of employees may now be paid and covered at the cost of the debtor. Such amendments should promote emergence of professional category of representatives of employees[5].

By the said amendments, the legislator based on the aim to protect the weakest category of creditors has granted employees quite effective mechanism of influence on the employer both within the bankruptcy procedure and beyond it.

Bankruptcy of citizens

Surely, the most anticipated amendments introduced last year to the Law On Bankruptcy, which we should mention, were provisions defining procedures for the bankruptcy of citizens. Bankruptcy procedure for citizens was anticipated for a long time and the urgent need for such procedure was obvious and had serious economic background. The main goal of the introduction of such procedure is to give opportunity to citizens to be released from credit dependence. It is common knowledge that banks struggle to dictate to citizens such credit terms, which with average existing balance of income and consumption of citizens simply prevent the latter from repaying loans. In essence, it is credit slavery. On the other hand, bankruptcy of citizens will allow releasing citizens from the pressure of various collection agencies, which activity is often unlawful. Thirdly, bankruptcy of a citizen will allow banks writing off credit debt as uncollectable.

1. Paragrapf 1 Article 7 of Law on Bankruptcy.
2. Paragrapf 1 Article 4 of Law on Bankruptcy.
3. Paragrapf 3 Article 59 of Law on Bankruptcy.

BANKS STRUGGLE TO DICTATE TO CITIZENS SUCH CREDIT TERMS, WHICH WITH AVERAGE EXISTING BALANCE OF INCOME AND CONSUMPTION OF CITIZENS SIMPLY PREVENT THE LATTER FROM REPAYING LOANS

Issues devoted to the implementation of bankruptcy procedures for citizens were frequently covered on the pages of our publication, and even this edition has their short review in pages 12. That is why we will not dwell on them in details. Though one detail should be mentioned, it is somehow rarely seen in comments, articles and recommendations. It is widely discussed that in order to file to court application on bankruptcy of a citizen his/her total indebtedness should exceed 500 000 Rubles. But, luckily, most citizens have smaller debts. It turns out that they cannot be released of such debt, but taking into the account the average income around the country the amount of 200–300 000 Rubles is overwhelming to repay.

But in fact this is not quite true. Debt above 500 000 Rubles is a required term only for citizen's creditors. If a citizen voluntarily wishes to be acknowledged a bankrupt, he/she is entitled to refer to court with any size of indebtedness, even if it is 1 Ruble, it is them, who cannot refer to court with application on the acknowledgement of the citizen a bankrupt, if his/her indebtedness is below the said amount. Such limit is designed to avoid mass bankruptcy of citizens, whose debts can still be repaid by them independently. Also, the limit of 500 000 Rubles is determined to create liability of a citizen to file to court independently petition on bankruptcy.

If a citizen voluntarily wishes to be acknowledged a bankrupt, he/she is entitled to refer to court with any size of indebtedness, even if it is 1 Ruble. It is important only to have circumstances, which obviously prove that he/she is unable to perform financial obligations and (or) obligations for making mandatory payments within specified time limit, and also to have features of insolvency or insufficiency of property.

IF A CITIZEN VOLUNTARILY WISHES TO BE ACKNOWLEDGED A BANKRUPT, HE/SHE IS ENTITLED TO REFER TO COURT WITH ANY SIZE OF INDEBTEDNESS, EVEN IF IT IS 1 RUBLE

Today, it is fair to say that there is a legal regulator of bankruptcy of citizens, but it is still unclear how it will work in practice. Today courts have a great number of petitions on the bankruptcy of citizens, but initiated proceedings on bankruptcy of citizens are isolated, and yet there are no completed proceedings at all. That is why amendments, which we discussed in our review, are obviously not the last alterations in the Law On Bankruptcy, but we will keep track of them.

4. Paragrapf 5 Article 10 of Law on Bankruptcy.
5. Paragrapf 11 Article12.1 of Law on Bankruptcy.

INNOVATIONS IN THE LAW AND LAW ENFORCEMENT OF STATE REGISTRATION OF LEGAL ENTITIES AND SOLE PROPRIETORS

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

The year 2015 turned out to be rich in amendments regarding procedures of state registration of legal entities and sole proprietors. First of all, it is related to the fact that in the last two years corporate law underwent significant alterations, and secondly, experience has proven that tax authorities declared war on reorganization through front parties.

Let's review the most distinct innovations in more detail.

Registration of Model Articles of Association

Since 2014, all legal entities have been granted lawful right to submit for state registration model articles of association especially approved for such purposes by authorized bodies. But the legislator took a step further and allowed such parties, including economic companies, not only registering model articles of association, but also act under them[1]. Following amendments in the Civil Code, the applicable alterations were introduced in the Law on Registration. After approval, model articles of association of legal entities should be publicly displayed on the official website of the Federal Tax Service www.nalog.ru[2].

As the result, after the approval of model forms of articles of association for legal entities with various legal forms, organizations may emerge without any articles of association at all. Information on the fact that the organization does not approve its own articles of association and uses the model form should be recorded in the Unified State Register of Legal Entities[3].

Advantages and disadvantages of the model articles of association are listed in the following table 1.

It appears that the new option related to the use of model articles of association will be most relevant for small and micro-enterprises, and also for organizations, where the sole member and the sole executive body are the same person. Surely, if members (shareholders) have the task to separate rights and duties of each other as thoroughly as possible or set forth additional provisions and terms, application of model articles of association is unreasonable.

1. Paragraph 2 Article 52 of the Civil Code of the Russian Federation.
2. Paragraph 10 Article 6 of Federal Law No. 129-FZ on State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.
3. Subparagraph "e" paragraph 1 Article 5 of Federal Law No. 129-FZ on State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.

Table 1.

Advantages of the model articles of association	Disadvantages of the model articles of association
Such terms as scope of authority of organization members, procedures for the exercise of corporate rights of members and voting on issues put on the agenda of the general meeting of members (shareholders), may be approved in the corporate contract and will remain confidential for third parties. Absence of the approved articles of association allows not to submit such document at state registration, submission of documents in various government bodies and at notary actions, not to submit its copies to counteragents for confirmation of authority of the sole executive body. Model articles of association allows avoiding needless paperwork because at the amendment of data, which should be set forth in the articles of association, state registration of revised articles of association or such amendments is not required.	Model articles of association does not allow changing procedures and terms for carrying out general meeting of members, specify optional term of office of sole executive bodies and other provisions except those, which may be stipulated in the corporate contract.

If members (shareholders) resolve to refuse the use of model articles of association, organization will need only to register its own articles of association instead of model articles[4].

Since December 29, 2015 legal entities have notional opportunity to carry out their activity under model articles of association, however, as of the moment of preparation of this article forms of model articles of association were absent.

Address and Location of a Legal Entity

Revised Law on Registration separates terms of address and location of a legal entity. While no regulation of the Russian corporate law contains precise definitions of these terms, the implication is that the Law recognizes administrative and territorial unit, within which a certain registering body acts, as a location of a legal entity. In other words, as for legal entities registered in the territory of Moscow Interdistrict Inspectorate No. 46 of the Russian Federal Tax Service in Moscow is the registering body, "Moscow" will be required and sufficient concretization of the location. Similarly, the issue is resolved in cities of federal significance, such as St. Petersburg and Sevastopol. In other regions, except cities of federal significance, state registration of legal entities and sole proprietors is carried out by tax inspectorates in municipal districts, it means in this case concretization should be made up to administrative and territorial unit of municipal districts[5].

As to address, according to the logic of the legislator, address should be understood as an aggregate of precise address details corresponding to the All-Russian Classifier of Addresses, which may be used for communication with a legal entity.

4. Paragraph 2.1 Article 17 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.
5. This conclusion is drawn from the regulation of paragraph 1 Article 18 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.

For the first time this terminological issue became challenging because the Law on Registration has separated lists of documents submitted at the introduction of amendments to address and location of a legal entity. Thus, if address of a legal entity is altered, but the old and the new addresses are within the same location (it means the registering body remains the same), the list of documents subject to submission at registration is limited by application in approved form and resolution of members (shareholders) on the introduction of amendments. But if at address alteration the location of a legal entity changes, it means organization leaves the area of responsibility of its registering body, then, first of all, since January 1, 2016 such registration should be carried out in two stages: first stage — submission of information on the resolution made regarding the alteration of location, and the second stage — submission of application on registration of a new location not later than within 20 days from the submission of the first package of information. Secondly, besides standard set of documents, at registration documents should be submitted confirming that legal entity or person entitled to act without power of attorney on behalf of a legal entity or member of a limited liability company owning more than fifty percent of the total number of votes of members of this company has the right to use real estate unit or its part located at the new address of a legal entity[6].

Obviously, such significant complication of procedure for the transfer of organization to other registering body will not lead to the increase of those willing to undergo it. Almost certainly the main and the basic consequence of such amendments will be that business representatives will liquidate or sell their equities in operation companies, which do not own significant assets, and create new organizations in subjects of their interest instead of undergoing complex and long-term system of transfer of the registration case.

Time Period for State Registration

Since December 29, 2015 another amendment has been enacted setting aside registration of incorporation of legal entities from other types of registration. Unlike registration, for example, of amendments introduced to constituent documents and (or) to the Unified State Register of Legal Entities, which as previously is carried out within five business days, the time period for state registration of legal entities at their incorporation has been reduced to three business days[7]. The similar time period applies to state registration of sole proprietors[8].

Submission of Documents for State Registration

Since January 1, 2016 it is formalized in legislation that submission of any documents for state registration is allowed, except previous means, by notary and by Internet, which includes through the unified portal of state and municipal services[9]. Thus, applicants have been granted great opportunity to submit documents to registering bodies even without use of electronic signature key, if they are registered on the portal of state services.

Transfer of Title to Equity and Pledge of Equity

Amendments have also addressed procedures for state registration of transfer of title to equity in legal entities and pledge of equity and have dealt with the composition of applicants at such type of registration. If until December 31, 2015 applicants had to be holders of applicable equities and at their alienation — sellers of equity, since January 1, 2016 two groups of people authorized to perform such actions have been defined. The ground for their separation is the fact of notary certification of the deal, on the basis of which registration is carried

6. Paragraph 6 Article 17 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.
7. Paragraph 3 Article 13 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.
8. Paragraph 3 Article 23 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.
9. Paragraph 1 Article 9 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.

out. Thus, at transfer of title or pledge of equity subject to state registration the notary should be the applicant. If transfer of title or pledge of equity is not subject to notary certification, the applicant status remains with the owner (seller) of equity[10].

Verification of Information Contained in the Unified State Register of Legal Entities

Since January 1, 2016 for the first time registering tax authorities have been authorized to settle disputes related to state registration. Such authority has been granted to them as part of verification of information contained in the Unified State Register of Legal Entities. In particular, if interested parties submit objections regarding the upcoming state registration of amendments in the articles of association of a legal entity or upcoming incorporation of data in the Unified State Register of Legal Entities, the registering body will be independently entitled to carry out the relevant examination and determine the authenticity or inaccuracy of submitted data by any of the following lawful means:

- by examining documents and data maintained by the registering body, which includes objections of interested parties, and also documents and explanations submitted by the applicant;
- by obtaining required explanations from parties, which may be aware of any circumstances relevant to examination;
- by obtaining certificates and data on issues arising at examination;
- by carrying out inspection of real estate units;
- by engaging expert or specialist for participation in the examination[11].

State registration cannot be carried out, if inaccuracy of information incorporated in the Unified State Register of Legal Entities is revealed[12].

Except submission of objections to yet incomplete state registration, the law stipulates possibility of acknowledging already entered record as inaccurate. The record on acknowledgement of information as inaccurate may be entered on the basis of objection filed by individual, if information relates directly to such person. Thus, for example, if after the release of individual of duties of the sole executive body of legal entity information on such person remains on the Register, such person is entitled to refer to the registering body with application on the acknowledgement of such information as inaccurate. Though the registering body cannot delete inaccurate information from the Register, it may, upon obtaining required proof and carrying out examination, enter record on its inaccuracy[13].

As is clear from the provided examples, in 2016 procedures for state registration of legal entities have been significantly complicated. Obviously, interest of the legislator focused on the attempt to remove from the market of state registration dishonest and front participants, and also to limit opportunities to submit inaccurate information during registration. How efficient this strategy and, mainly, these tools applied by the legislator are, we will find out this year.

10. Paragraph 1 Article 9 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.
11. Paragraph 4.2 Article 9 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.
12. Paragraph 4.4 Article 9 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.
13. Paragraph 5 Article 11 of Federal Law No. 129-FZ On State Registration of Legal Entities and Sole Proprietors dd. 08.08.2001.

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TAX LAW CHANGES IN CYPRUS

Antonis Karitzis
Advocate — Legal Consultant
Managing Director
A. Karitzis & Associates L. L. C.

In July 2015, the Minister of Finance of the Cyprus Government announced, at a press conference, the transmission to the House of Representatives of a package of tax Bills which he characterized as a very significant Tax Reform. The Bills were enacted and introduced by the Government aiming on the encouragement of further investments in Cyprus and the invigoration of the economic activity.

The first set of Bills were voted into law by the House of Representatives on 9th July 2015 and were enter into force on 16th July 2015 upon their publication to the Official Gazette of the Republic of Cyprus.

The second set of Bills, were passed into law on 10th December 2015 and published in the Official Gazette of the Republic of Cyprus whereupon they bestowed with force and effect.

It should be stressed that some of the amendments introduced as a result of the Council Directive (EU) 2015/121 of 27th January 2015 which amended Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

In this Article, we are dealing with the following legal updates which the Tax Reform brought about to Income Tax Law ("ITL") on both of the aforesaid enacting stages:

1. First Employment in Cyprus — Exemption.
2. Neutralization of foreign exchange gains or losses.
3. Capital allowances.
4. Group Loss Relief.
5. Tax on Exploitation of Natural Resources.
6. Adjustments on arm's length transactions between related parties.

Employment in Cyprus by Non Tax Residents

Any Employment

The ITL grants an exemption on any employment commences in Cyprus by any person residing outside Cyprus before the commencement of his/her employment. The exemption is equal to the lower amount of either the 20% of the remuneration received by the employee or the amount of 8 550 Euro.

The application of the exemption begins from the 1st January of the year following the year that the employment commenced.

The Law has been amended to the extent relating to the time period that the exemption applies. Previously, the exemption used to apply for a period of 3 years.

After the amendment, the exemption is granted with a ceiling of 5 years, with a time horizon until the year 2020. Also, the exemption now relates to employments commenced on or after the year 2012. The exemption applies for each tax year.

Employments Where Remuneration Exceeds the Amount of 100 000 Euro

The ITL grants an alternative exemption on employment income to the one granted by section 8(21) of the Law that has been described above.

Again, the foundation of the exemption is the same: it relates to an employment commenced in Cyprus by a person residing outside Cyprus before the commencement of his/her employment. The exemption equals to the 50% of the person's remuneration received from any employment in Cyprus.

The exemption used to be granted for 5 years, starting from the year that the employment was commenced.

The amending Law has extended the duration of the exemption to 10 years, whilst it has made the qualification criteria more stringent or more definite.

In particular:

- The exemption is granted for a period of 10 years during which the employment is exercised in Cyprus, starting from the year of employment, provided, of course, that the employment income exceeds the amount of 100 000 Euro per annum.
- The exemption is not granted to a person who used to reside (i.e. tax resident) in Cyprus in any 3 out of the 5 tax years preceding the year in which the relevant employment commenced, neither to a person residing in Cyprus in the year preceding the year in which the employment commenced.
- The exemption is granted in any year in which the income from employment in Cyprus exceeds the 100 000 Euro per annum, irrespective of whether the employment income may fall below 100 000 Euro at any particular year, provided that when the employment commenced, the employment income exceeded 100 000 Euro per annum (i. e. the employment income exceeded 100 000 Euro on the first year of employment) and the Commissioner is satisfied that the change in the annual income from the employment in the Republic is not an arrangement with the objective of taking advantage of the exemption.
- The exemption provided under the provisions of section 8(21) above is not granted where this section 8(23) applies.

Neutralization of Foreign Exchange Gains

The amending Law has introduced a new exemption relating to gains deriving from the fluctuation of foreign exchange rates and the resulting differences.

In particular, the newly introduced provisions provide the following.

General Principle

Any gain resulting from foreign exchange differences due to the fluctuation of exchange rates is exempt, excluding profit resulting from foreign exchange trading.

Qualifications

Provided that a person who engages in foreign exchange trading may elect, irrevocably, so that unrealized exchange differences are not subject to tax and are not tax deductible, inasmuch as they relate to gains and losses, respectively. The irrevocable election is submitted in a form approved by the Commissioner, together with the next tax return that the person is obliged to submit after the entry into force of the provisions of this exemption, provided that the tax return is submitted within the time limit provided under Article 5 of the Assessment and Collection of Taxes Law.

Definitions

- the term *"profit resulting from exchange differences"* includes profit from rights or currency derivatives.
- the term *"exchange differences trading"* includes trading in rights or currency derivatives.

Capital Allowances

Section 10(2) of ITL stipulates that in ascertaining the chargeable income of any person carrying on business there shall be allowed a deduction of a reasonable amount for the exhaustion and wear and tear of any assets of the company arising out of their use in the business during the year of assessment.

According to the Law before its amendment, for all machinery and plant that had been acquired during the years of assessment 2012 until 2014, a deduction for wear and tear at 20% was allowed, whereas for industrial and hotel premises acquired during the same period of time, a deduction at 7% was allowed. The amending Law has extended the acquisition period from 2014 to 2016 (inclusive).

Group Loss Relief

The ITL allows a resident company ("surrendering company") to surrender (assign) its losses to another company resident in the Republic, provided that they are both members of the same group of companies for the whole year of assessment.

The amending Law has extended the definition of the "surrendering company" into a company which has its seat and is tax resident in a member state, provided it has exhausted all the possibilities to set off or carry forward the tax losses it has incurred, in the state of tax residence or in another member state where possibly an intermediate holding company is located.

Tax on Exploitation of Natural Resources

The recent oil and gas exploration activities within the exclusive economic zone of the Republic of Cyprus brought about the need to introduce a specific provision in the Law governing the taxation of the companies involved in the exploration, extraction or exploitation of natural resources within the EEZ of the Republic.

In particular, section 23A of the ITL provides that the gross amount or other income stemming from sources within Cyprus, by any person who is not resident in Cyprus, as consideration for services carried out in Cyprus in connection with the extraction, exploration or exploitation of the seabed, subsoil or natural resources and the establishment and operation of pipelines and other installations on the ground, seabed or on the surface of the sea, is liable to tax at the rate of 5%.

Adjustments on Arm's Length Transactions

Section 33 of ITL encapsulates the well-known principle of arm's length in connection with transactions between related parties.

In particular, for the purposes of the ITL, the concept of "arm's length" apply where in the commercial or financial relations or transactions between connected persons, in the sense defined in the Law, conditions are made or imposed between those persons which differ from those which would be made between independent businesses, then any profits which would have accrued to one of the businesses, but have not so accrued by reason of those different conditions, may be included in the profits of that business and taxed accordingly.

The amending Law took the concept a step forward raising any injustice that might occur to the parties by the adjustment of the profits. Specifically, it stipulates that two taxable persons or businesses infringe the "arm's length" principle in their dealings or transactions and the Commissioner increases the profits or benefits of the one, a deduction shall be granted to the other person or business equal to the increase in the profit or benefit of the business.

CYPRUS INTRODUCES NOTIONAL INTEREST DEDUCTION REGIME

Konstantinos Ioannides
Director
KP & Partners Ltd

Introduction of a Notional Interest deduction regime on equity

Over the last years, the supply of credit by financial institutions has been considerably reduced due to the banking crisis. In an effort to help the economy return to a growth path, the Government has introduced a Notional Interest Deduction (NID) regime on corporate equity. The NID regime is expected to encourage the introduction of equity capital into corporate structures which will effectively result in de-leveraging the economy and foster economic growth. The NID will remove any distortions between equity and debt finance by bringing equity and debt into a level playing field since both will be entitled to a tax deduction.

As per the amended law, corporate entities (including permanent establishments of foreign companies) will be entitled to a NID on equity. The NID will equal the multiple of "reference interest rate" and the "new equity" held and used by a company in the carrying on of its business activities. Both terms are defined in the law:

- "Reference interest rate" means the interest rate of the 10 year government bond yield of the country in which the new equity is invested increased by 3% having as a lower limit the 10 year government bond yield of the Republic of Cyprus increased by 3%. The bond yield is the one applicable as of 31 December of the tax year preceding the relevant tax year.
- "New equity" means any equity introduced in the business on or after 1 January 2015 in the form of issued share capital and share premium (provided it is fully paid) and "old equity" means equity that existed on 31 December 2014. "New equity" does not include amounts that have been capitalized as equity and which are the result of a revaluation of movable or immovable property.

The NID regime is considered as interest expense and is subject to the same limitation rules as interest. It needs to be mentioned that the NID granted on new equity cannot exceed 80% of the taxable profit before allowing the NID. In the event of losses, the NID will not be available. Effectively, this means that the NID cannot create or increase a tax loss. Taxpayers can elect not to claim the NID or claim part of it for each tax year.

The law includes both specific and general anti-abuse provisions aiming to:

- Limit the classification of capital as "new equity" in case this relates

directly or indirectly to reserves that existed on 31 December 2014 and in case the contributed capital is not related to new assets used in the business.

- Tackle arrangements which aim to re-characterize "old equity" into "new equity" or arrangements which have been put into place with the aim of claiming NID without any valid economic or commercial reasons.
- Restrict the NID in case another entity has claimed a NID or an interest expense deduction on the same equity capital.
- Ensure that the NID is calculated as if no company reorganization had taken place.

The NID regime is effective as of 1 January 2015.

Notional Interest deduction methodology

		Example 1	Example 2	Example 3	Example 4
A	New equity	500 000	1 000 000	1 000 000	100 000
B	Reference interest rate	8%	10%	8%	10%
C	NDI before maximum allowance (80%)	40 000	100 000	80 000	10 000
D	Taxable profit	100 000	100 000	100 000	NILL
E	80% of taxable profit (maximum allowance)	80 000	80 000	80 000	NILL
F	**NDI**	**40 000**	**80 000**	**80 000**	**N/A**

NDI = Lower of C and E

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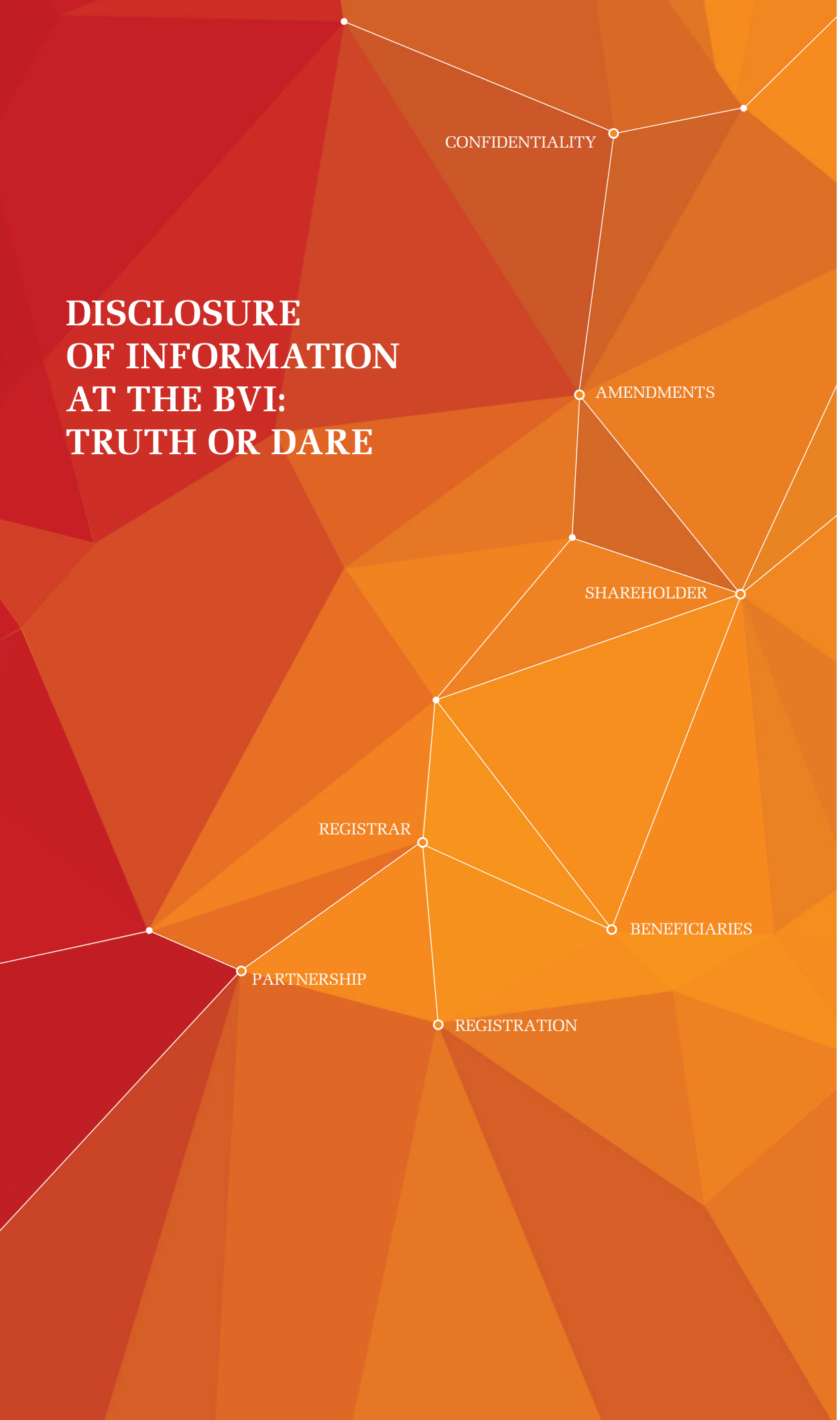
DISCLOSURE OF INFORMATION AT THE BVI: TRUTH OR DARE



Irina Otrokhova
Lawyer
Corporate Services
Korpus Prava (Cyprus)

For many years already the British Virgin Islands have been one of the most used offshore jurisdictions for the registration of foreign companies. The BVI have always attracted investors as jurisdiction for holding business. One of the main reasons why the BVI are so popular is the high level of confidentiality of information. Amendments in the law of the BVI introduced in 2016 may significantly change the state of affairs.

Something about the BVI

The British Virgin Islands are one of the first offshore jurisdictions used since 1980s. Most international companies at the BVI were established as a tax planning tool and property (assets) protection mechanism mostly together with the use of the trust mechanism for holding shares or other property (assets). Companies are registered by licensed registration agents, who should physically be at the BVI and which activity is governed in accordance with the Banks, Trusts and Companies Managers Act, 1990. The economy of the BVI is the most stable and prosperous in the Caribbean. The main area of economic activity is tourism (islands are annually visited by about 800 000 tourists mainly from the USA), and also the significance of the financial sector is constantly increasing.

At the BVI, there is no tax on the profit of organizations (corporate tax) for international companies (BVI Business Companies), and there is no VAT or sales tax. However, a business company should pay an annual duty, which amount depends on the size of the company's authorized capital and the payment deadline depends on its registration date.

The British Virgin Islands are the most popular jurisdiction, including among Russian entrepreneurs. Today, there are more than 650 000 companies registered: up to 40% of all offshore companies in the world. Activity of offshore companies is mainly governed by the BVI Business Companies Act, 2004. The main factors defining the choice of jurisdiction are: low cost of registration and maintenance of a legal entity, absence of requirements regarding residence of a director, formal requirements for minimum authorized capital, and also opportunity to register company in quick time (literally, in 1 day).

Confidentiality

Until recently, confidentiality was another attractive aspect: at the BVI, there is no unified register of beneficiaries and shareholders. Also, there is no public access to information on directors. In essence, such information may be held

strictly confidential by the registration agent, however, there are no official registers kept for the storage of such information. Such information may be transferred to tax and (or) other state authorities only under the BVI court ruling. Possibility to execute a trust agreement was always considered an additional protection measure. The BVI is a state with the common law in force. Within the corporate law, a person establishing a company is called a shareholder. However, such person is de facto a nominee shareholder, which holds shares for the benefit of the ultimate owner (beneficiary). It should be noted that the term nominee shareholder is used only for the purposes of business communication, and in the law the nominee shareholder is called simply a shareholder. Within the trust law, a beneficiary and a so called nominee shareholder enter into a trust agreement, i. e. a trust agreement for property, under which the property is owned by the trustee, who should hold such property for the benefit of the beneficiary. However, data on beneficiary is not disclosed in any official documents of the company or in any share certificates. A nominee shareholder can be both an individual and a legal entity.

Amendments — Information on Directors

At the end of 2015, a draft law emerged introducing amendments to the BVI Business Companies Act, 2004, so called the BVI Business Companies (Amendment) Act, 2015. This draft law shall bind registration agents at the BVI to keep the register of directors of companies registered at the BVI and submit its copy to the Registrar of Companies. The copy shall be submitted to the Registrar within 14 days from the appointment of the first director, and also within 21 day from the introduction of amendments to the register of directors. The register shall be kept by the Registrar in strict confidentiality and may be made available only under the court ruling or on the request of relevant state authorities. Copies of registers of directors shall be submitted to the Registrar until December 31, 2016. The registrar may extend such time period for 6 months, if receives a written confirmation from the company that the company takes all possible measures to submit the register of directors and (or) the company failed to submit the register due to the heavy workload of the registration agent.

DRAFT LAW SHALL BIND REGISTRATION AGENTS AT THE BVI TO KEEP THE REGISTER OF DIRECTORS OF COMPANIES REGISTERED AT THE BVI AND SUBMIT ITS COPY TO THE REGISTRAR OF COMPANIES

If the company fails to meet deadlines for the submission of the register of directors, a penalty in the amount of 100 $ shall be imposed on the company. If afterwards the company continues to withhold information, a penalty in the amount of 25 $ per each day of delay shall be imposed on it until the moment the company submits the copy of the register of directors.

Amendments — Information on Shareholders

The BVI Business Companies (Amendment) Act, 2015 also introduces new provisions on the register of shareholders. As currently revised and published, the maintenance of the register of shareholders and also its registration at the Registrar of Companies are not compulsorily. The company may voluntarily submit to the Registrar the register of shareholders and also copies with subsequent alterations, or may also discontinue registration of data on shareholders. The draft law does not specify any time frame for the submission of data to the Registrar.

Amendments — Information on Beneficiaries

On October 22, 2015 there was a regulation published and enacted introducing amendments to the law of the BVI on anti-money laundering and counter-terrorism financing, so called Anti-Money Laundering (Amendment) Regulations, 2015. This law stipulates the following definitions of beneficiary (without limitation):

- an individual, who directly or indirectly owns more than 10% of shares or voting rights in the company (save for the companies, which shares are listed on the recognized stock market);
- an individual controlling the company and not related to the participation in the authorized capital;
- partnership participants;
- an attorney.

Which data on beneficiary should be kept by the registration agent?

- full name;
- date of birth;
- citizenship;
- residence address;
- company goals and activity.

The law sets forth that the relevant person, with whom the customer has entered into the agreement, should collect required information to determine compliance with the definition of beneficiary owner and submit it to the applicable Commission. The “relevant person” means the registration agent, the “client” means beneficiary, and the “Commission” means representatives of various state authorities (Registrar, tax authority and etc.). The law does not specify definition and contents of information. The legislator uses blurred general terminology specifying that the agent should take “reasonable measures” to obtain information on the beneficiary owner for determining his/her compliance with the definition of a beneficiary owner. Thus, the legislator reserves opportunity to consider almost any action a “reasonable measure”. Information should be obtained until December 31, 2016. The time period may be extended, if during 7 months minimum 50% of information is obtained or during 10 months minimum 75% of information is obtained. In case of delay in information submission or refusal to submit information, the company shall be liable to penalty in accordance with the law of the BVI.

Risks

It should be noted that both draft laws do not provide comprehensive information on the issue brought up in this article. BVI Business Companies (Amendment) Act, 2015 has not been published or enacted yet. The document provides clear information only within provisions on directors. As for shareholders, thus far requirements for the submission of information are not compulsory, but, first of all, language of the draft law may change, and secondly, information on many companies will be, most probably, submitted based on the definition of a beneficiary owner set forth in Anti-Money Laundering (Amendment) Regulations, 2015. It means the beneficiary, who owns directly, indirectly or by trust more than 10% of the company in any case will be subject to the law and the registration agent will collect information on him/her.

TODAY, REGISTRATION AGENTS ARE IN STANDBY MODE WAITING FOR EXPLANATIONS FROM THE LEGISLATOR REGARDING APPLICATION OF ADOPTED AMENDMENTS IN PRACTICE

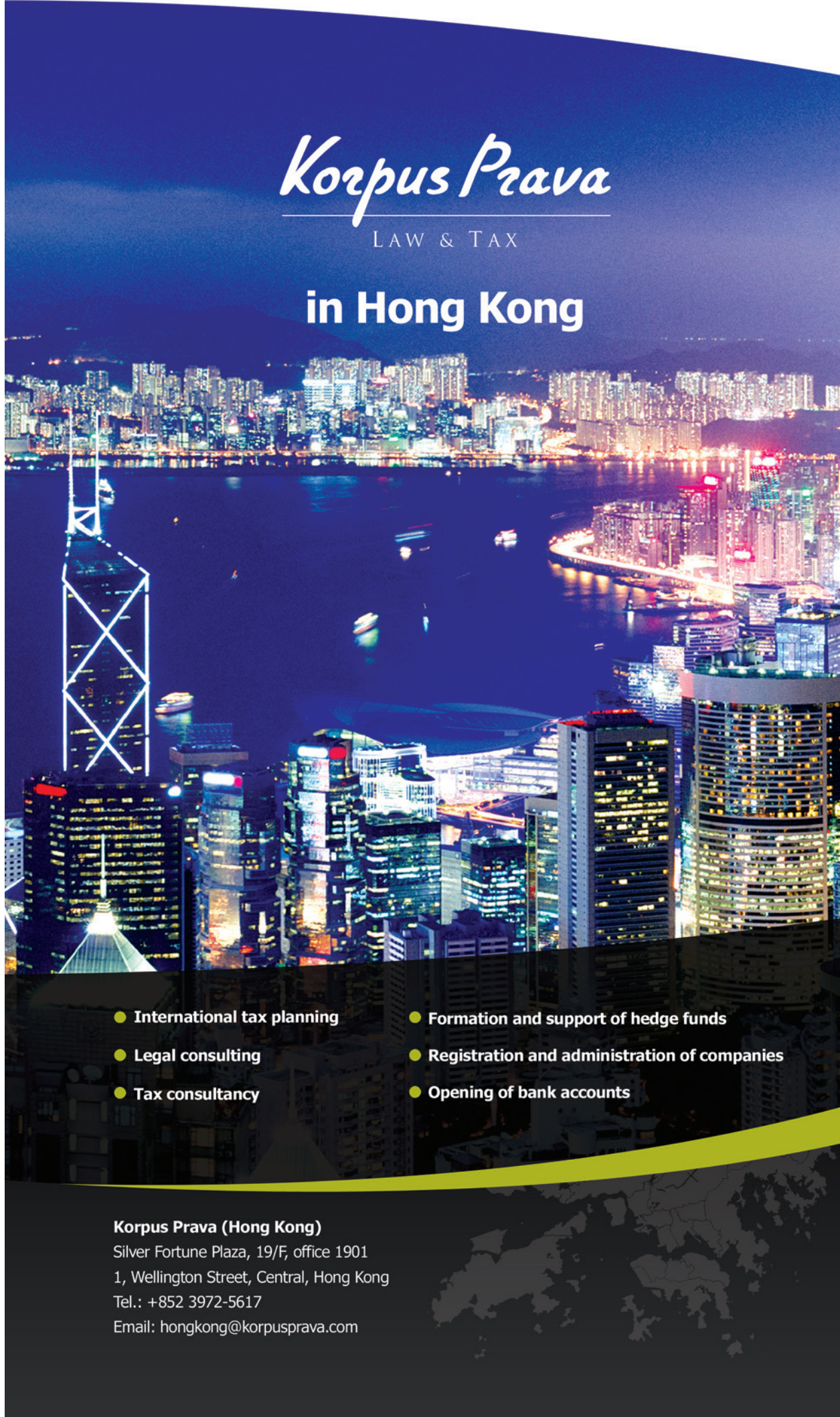
Anti-Money Laundering (Amendment) Regulations, 2015 provide definition of a beneficiary owner, however, specifying that the legislator is not

limited to it. It means in essence, that all beneficiaries may be subject to the law. Also, the legislator does not stipulate the contents of information required for submission and means for its obtainment, it means in essence, that it may be any legal means and any information. Today, registration agents are in standby mode waiting for explanations from the legislator regarding application of adopted amendments in practice.

Information should be kept by the Registrar (registering body) in strict confidentiality and may be granted only under the BVI court ruling or on the request of state authorities. However, in case of further changes of law towards disclosure of information, information on directors, shareholders and beneficiaries will be immediately available due its availability in state authorities. Taking into the account global trends towards transparency and information exchange, such scenario should be considered.

What to do?

Today, business community is worried about upcoming changes at the BVI and is at the stage of elaborating practical solutions for the avoidance of negative consequences for the business. At this stage it is difficult to define clearly ways out due to the absence of practical methods of information collection. Of course, first of all, thoughts on business transfer to other offshore jurisdiction come up, however, it is impossible to exclude same situation in other countries. We plan to get back to this issue in our next editions as soon as there will be clarity regarding application of legislative amendments in practice.



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:

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Korpus Prava is a member of 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.

Contacts

Korpus Prava (Russia)

B. Nikolovorobinsky per., bld. 10
109028 Moscow, Russia
Kommunisticheskaya street, 40, office 602,
630007 Novosibirsk, Russia
+7 (495) 644-31-23
russia@korpusprava.com

Korpus Prava (Cyprus)

Griva Digeni, office 102,
3101 Limassol, Cyprus
+357 (25) 58-28-48
cyprus@korpusprava.com

Korpus Prava (Hong Kong)

Silver Fortune Plaza, Level 19,
Office 1901, 1 Wellington Street
Central, Hong Kong
+852 (39) 72-56-17
hongkong@korpusprava.com

Korpus Prava (Latvia)

E. Birznieka-Upisha Str. 20a,
Office 722
LV-1011 Riga, Latvia
+371 (6) 72-82-100
latvia@korpusprava.com

Korpus Prava (Malta)

Pinto House, 95, 99, 103,
Xatt l-Ghassara ta’ L-Gheneb
Marsa, MRS 1912, Malta
+356 (27) 78-10-35
malta@korpusprava.com

Tax & Legal Practice:
Irina Kocherginskaya — kocherginskaya@korpusprava.com

Audit Practice:
Igor Chaika — chaika@korpusprava.com

Corporate Services:
Olga Bukharina — bukharina@korpusprava.com

Business Development Division:
Aleksandra Kaperska — kaperska@korpusprava.com