Korpus Prava

#1 / Winter, 2017

Analytics

Tax & Law Journal for Top Executives

Amendments in legislation enforced in 2017

Co-publisher

Complicated Life of the "Simplified" and Other Changes in the Tax Legislation

New Accounting Standards

Audit Under Russian and International Rules

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Московская государственная юридическая академия

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Dear readers,

Welcome to the pages of our corporate edition “Korpus Prava. Analytics”.

It has already become a tradition to dedicate the first issue of the year to the topics, which would be relevant this year.

In the pages of this edition you will learn about relevant amendments in the law of foreign countries. From 2017 a number of international tax treaties come into force.

This year has brought good news for organizations applying simplified taxation scheme. Legal entities and also private entrepreneurs beginning their professional commercial activity can choose one of the two types of the taxation scheme: common or simplified. Our junior lawyer Roman Moskovskikh tells about the simplified taxation scheme and controlled indebtedness.

In this edition we have tried to introduce you to the new accounting rules, have touched on the issue of financial terrorism, have reviewed measures for the increase of transparency for the prevention of money laundering and have continued searching for an actual recipient of income.

Please, pay attention to the actively discussed topic “Common Reporting Standard (CRS)”. Our experts have discussed the main issues and disputable aspects in our annual section in Q&A form.

We hope that in this edition you will find only relevant information and will easily implement all your plans in 2017.

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

Artem Paleev
Managing Partner
Korpus Prava


a hot stove

Founder and Publisher

Korpus Prava
Law & Tax

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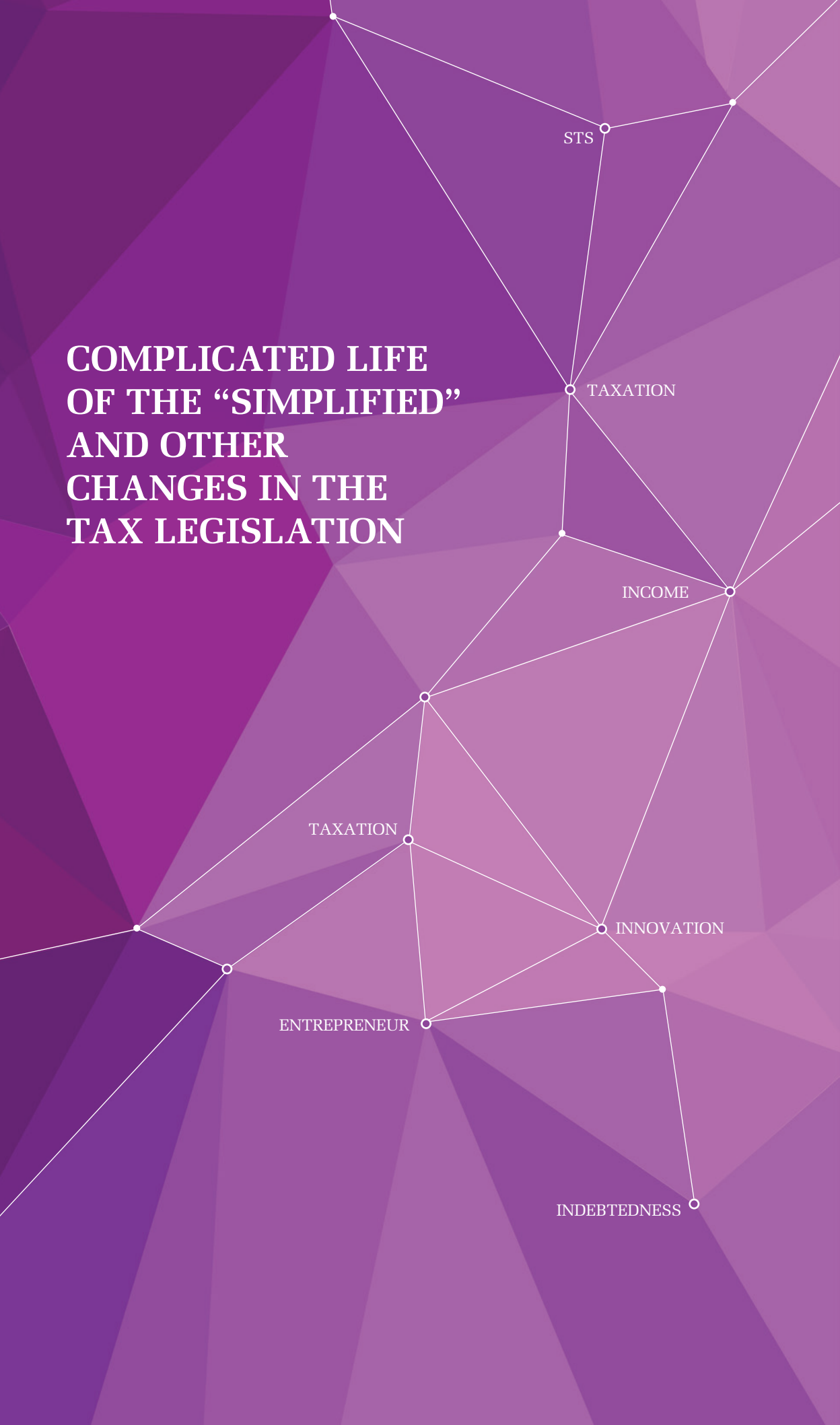
COMPLICATED LIFE OF THE “SIMPLIFIED” AND OTHER CHANGES IN THE TAX LEGISLATION



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The year 2016 was full of events in the field of geopolitics, which partly shaded the considerable effort that our legislator applied throughout the year in an effort to create a legal framework that meets today's challenges and trends in Russia. Such efforts can be indeed considered significant, because this year the State Duma set a record: 6 165 bills were considered, of which 1 994 were adopted and signed by the President of Russia, 4 171 were rejected.

Some changes, which came into force during the year, have been unjustly deprived of attention against the background of more dramatic events taking place in the international arena. This article will present some changes in the Russian tax legislation to be aware of in 2017.

The new year has brought good news for companies that use the simplified taxation system

Legal entities and individual entrepreneurs, starting their professional commercial activity, may choose one of two options of the tax system: general or simplified.

Simplified tax system (STS) allows companies and individual entrepreneurs to significantly optimize their tax obligations to the state. In this regard, many business entities apply this system of taxation.

Since STS is focused on small and medium-sized businesses, the legislator has set certain limitations on the possibility of its application so that "simplified tax system" could not be used by major players in the market. In particular, these restrictions concern the number of people in the company, the value of income for the reporting period, the size of the permissible residual value of fixed assets.

So, from January 1, 2017, the following changes came into effect:

1. The maximum amount of the company's income for the transition to a simplified system of taxation equals 112.5 million rubles.

   This means that from January 1, 2018 a taxpayer has the right to transmit to the simplified tax system, if his income does not exceed the above amount.

   At the same time, the indexation of the maximum income size for the value of the deflator coefficient (as it was before) is suspended until 2020.

If the company combines several tax regimes (for example, general and UTII), when determining the maximum amount of income for the purposes of the transition to the STS it takes into account only the income received in the implementation of activities, which uses a general system of taxation. That is, if the company applies only UTII, it does not define the maximum size of income for the purposes of the transition to STS and does not indicate it in the appropriate notification.

At the end of 2016, the maximum size of income for retaining the right to use the simplified tax system should not exceed 79.740 million rubles (60 million rubles × 1.329 (deflator coefficient for 2016)).

2. The limit of residual value of fixed assets for the transition to a simplified system of taxation and application of this tax regime is 150 million rubles.

Until 01.01.2017, the company could use the simplified tax system, if the net book value of its fixed assets did not exceed 100 million rubles. We draw attention to the fact that the limit of value of fixed assets shall be based on all activities.

The way income and expenses will be determined

Income at STS is taxed at the full amount (if "income" is selected as the object of taxation) or net of any expenses (object of taxation "income minus expenses"). The composition of income comprises income from sales and non-operating income, determined in accordance with the provisions of the tax legislation, i.e. the same as for the purposes of corporate income tax. It should be borne in mind that the calculation of tax revenues related to the activities transferred into UTII are not accounted (they are accounted for separately). Also, the composition of income under the simplified tax system does not include the following income:

- the amounts of taxes returnable from the state budget according to the provisions of the Tax Code of the Russian Federation, because such amounts are neither income from sale nor non-operating income;
- the amounts of collateral or deposit obtained in the proof of the conclusion of the contract and to secure its implementation at the time of receipt;
- the amounts of returned advances and prepayments, provided the amount of advances and prepayments paid by the sellers of goods were not included as an expense in the determination of the tax base (otherwise the returned amount of advances and prepayments should be accounted by the taxpayer in the taxation as income);
- entry fees, membership fees, share contributions, donations (non-profit organizations under STS).

If the taxpayer has chosen "income minus expenses" as the object of taxation, it determines the tax base as the income received, reduced by the costs incurred. The costs should be economically justified and documented. The list of expenses that a taxpayer under STS may accept for a reduction of income received includes, in particular, advertising expenses of produced and (or) sold goods (works, services), a trademark and a service mark.

When calculating the tax under the simplified system of taxation, the following costs are not taken into account:

- to pay for services for the special assessment of working conditions;
- to pay for information services;
- to pay for the right to install and operate an advertising structure (for the taxpayer being the owner of advertising);
- for the purchase to employees of bottled drinking water;
- for subscriptions to newspapers, magazines and other periodicals;

- for the services of an accredited specialized organization for labor protection;
- for the purchase of the option for the right to sign a lease agreement.

Details for the taxpayers who have to report via the Internet

Innovations will be applied in respect of taxpayers and tax agents who are required to file declarations via telecommunication channels. At the moment, these are:

- major taxpayers;
- companies and entrepreneurs, which average number of employees in the preceding year exceeded 100 persons;
- newly created companies with an average number of employees exceeding 100 people;
- companies and individual entrepreneurs, who file the VAT return.

FOR FAILURE TO FULFILL THE OBLIGATION TO FILE THE REPORTING, THE TAX AUTHORITY MAY DECIDE TO BLOCK THE SETTLEMENT ACCOUNT OF THE TAXPAYER

The changes relate to the periods within which it should be possible to receive electronic documents from the inspection that is to connect to a system for submitting reports. Beginning July 1, 2016, 10 days will be given to implement this obligation. 10 days are counted from the day when the obligation to file declarations in electronic form arose to the person. For failure to fulfill the obligation to file the reporting, the tax authority may decide to block the settlement account of the taxpayer.

It is worth noting that once a company or an individual entrepreneur provides the opportunity to receive electronic documents, the ability to conduct transactions on the accounts and make transfers of electronic funds will be restored. The next day, the IRS employees are required to remove the block.

Regarding the deadline for sending an e-receipt of acceptance, it will be still 6 days.

About the controlled indebtedness

The concept of controlled indebtedness was introduced by the Russian legislator to determine the tax base for corporate profits tax, if the company has a debt to a foreign company.

Since January 1, 2017, new rules on the accounting of debt obligations on controlled indebtedness entered into force.

Below is a comparative analysis of the changes (see page 12).

Specific procedure for the account of interest will be applied, if the amount of the taxpayer's controlled indebtedness is more than three times greater than the difference between the sum of assets and the value of liabilities of this taxpayer on the last day of the reporting (tax) period.

The exchange of information for tax purposes with the Russian Federation

The year 2016 was marked by the fight with the offshore capital. In this regard, a significant part of the changes in the Russian tax legislation touched precisely the implementation of legal instruments to ensure the transparency of the tax business.

During the year, Russia and other countries signed a number of agreements on the avoidance of double taxation. Some of these agreements have already been covered by our experts.

According to the results of the outgoing year, the tax authority has updated the list of states that do not carry out the exchange of tax information with Russia in the proper volume. It now has fewer jurisdictions — 109 countries and 19 ter-

ritories (previously — 111 countries and 22 territories). Georgia, Estonia, Mauritius, Hong Kong, the Cayman Islands, Bermuda, Aruba were excluded. This list is supplemented by South Korea.

Current information on the existing agreements on the avoidance of double taxation is available on the official website of Korpus Prava.

Conditions for the recognition of the debt obligations of the Russian company (borrower) as the controlled indebtedness

Before January 1, 2017	After January 1, 2017
1. The debt obligation to a foreign company, directly or indirectly owning more than 20% of the authorized (share) capital (fund) of the Russian company-borrower. 2. The debt obligation to the Russian company recognized in accordance with the legislation of the Russian Federation an affiliate of the foreign company referred to in paragraph 1. 3. The debt obligation in respect of which the above mentioned affiliate and (or) a foreign company itself (paragraph 1) acts as a surety, guarantor or otherwise undertakes to ensure the fulfillment of the debt obligation of Russian company-borrower.	1. The debt obligation to a foreign person who is a related party of the Russian company, if such a foreign person directly or indirectly is involved in the Russian company, which has a debt obligation to this foreign person. 2. The debt obligation to the person recognized in accordance with the Tax Code to be a related party of the foreign person referred to in paragraph 1. 3. If the foreign person referred to in paragraph 1 and (or) its interdependent person referred to in paragraph 2, acts as a surety, guarantor or otherwise undertakes to ensure the execution of this debt obligation of the taxpayer — the Russian company.

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LATEST CHANGES IN THE LEGISLATION OF FOREIGN COUNTRIES

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Seychelles

The Seychelles have taken the next step to disclosure of information following the British Virgin Islands. We have repeatedly addressed the topic of transition of offshore jurisdictions to European information disclosure practice.

In 2006 The International Business Companies Act 2016 (hereinafter — the Act) superseding The International Business Companies Act 1994 was published in the Seychelles.

This act has introduced a number of changes, among which there are two main requirements — submission of information about directors and ultimate beneficiary owners — beneficiaries.

Submission of information about directors

The Act introduces a mandatory requirement to submit information about directors of all companies in the Seychelles to a registration authority in the Seychelles. The period of submission of information about the Directors will start from December 01, 2016, the submission is mandatory both for new and existing companies. The register of Directors will be open for public access from December 01, 2018. Until then, the register will not be open for public access, the access will be granted by virtue of a court decision or written request of a competent government authority of the Seychelles.

Deadline for the submission of information about directors

Existing companies registered before December 01, 2016 should submit information about directors within 12 months. The information is submitted only about their current director.

New companies registered or reorganized after December 01, 2016 should provide information within 30 days from the day of appointment of the director. Any changes of information about directors shall be submitted within 30 days from the day of appointment.

Information to be submitted:

- name;
- correspondence address;
- date of appointment;
- other information requested by the registration authority.

Penalty sanctions for untimely submission of information shall apply both to companies and directors of companies. The minimum amount of fine is 500 USD; subsequently, the amount may be increased depending on the duration of delay.

Submission of information about ultimate beneficiary owners (beneficiaries)

From December 01, 2016, representatives of beneficiaries shall submit information about beneficiaries holding more than 25% of shares to registration agents. The information shall be kept only with the registration agents.

Information about beneficiaries to be submitted to registration agents and contained in the register of beneficiaries:

- name;
- date of birth;
- address;
- nationality;
- information about ownership, type of ownership;
- date of commencement of ownership;
- ending date of ownership.

Period of submission of information about beneficiaries

Existing companies registered before December 01, 2016 shall provide information about beneficiaries within 12 months. New companies registered after December 01, 2016 shall provide the information within 30 days from the date of registration. Any changes in information about beneficiaries shall be submitted within 30 days from the date of documentation of such changes. Information about beneficiaries may be deleted from the register of beneficiaries in 7 years after the termination of ownership.

Penalty sanctions for untimely submission of information shall apply both to companies and directors of companies. The minimum amount of fine is 500 USD; subsequently, the amount may be increased depending on the duration of delay.

Currently, the register of beneficiaries shall be kept only with registration agents. However, it is believed that the disclosure of beneficiaries to registration authorities is only a matter of time.

Cyprus

On July 14, 2016, the Parliament of Cyprus decided upon complete abolishment of real estate tax from January 01, 2017. It has been found that the tax base over the 2016 tax period will be calculated according to the market value of real estate in 1980, moreover, the following benefits shall apply:

- in the event of tax payment before October 31, 2016 the amount of payable tax shall be reduced by 75%;
- in the event of tax payment from November 01 to December 31 the amount of payable tax shall be reduced by 72.5%.

Taxpayers who failed to settle accounts with the budget as of December 31, 2016 shall pay the fine in the amount of 10% of the tax amount reduced by 72.5%.

Bilateral double taxation agreements

A number of international tax agreements will enter into force from 2017.

Hong Kong – Latvia

On April 13, 2016, the Governments of Latvia and Hong Kong signed a Double Taxation Agreement. According to the terms of the Agreement, the tax at source on dividends and interest will be reduced to 0% for companies, in all other cases it will equal 10%. Current rate of tax withheld in Latvia from payments in favor of Hong Kong may reach 30%. The tax at source withheld from royalties shall be reduced to 0% for the company and 3%

in other cases (current tax rate applied in Latvia reaches 23%).

The Agreement shall apply to income received from January 01, 2017 in Latvia and from April 01, 2017 in Hong Kong. Conclusion of the Agreement between Latvia and Hong Kong means that Latvian fiscal authorities no longer consider Hong Kong an offshore jurisdiction, payments for the benefit of which are taxed at higher rate.

Hong Kong – Russia

On July 03, 2016, a Double Taxation Agreement between Russia and Hong Kong was signed. The signing of this Agreement and its further ratification is a sign of serious changes in the status of Hong Kong, which Russia had considered an offshore jurisdiction for a long time. Russian tax authorities no longer consider Hong Kong a country failing to provide a proper level of information disclosure and exchange. It was excluded from the "black list" of offshore jurisdictions compiled by the Ministry of Finance of the Russian Federation.

The Agreement establishes the following rates of the tax at source:

- on dividends — 5% for payments for the benefit of companies (but not partnerships) directly owning not less than 15% of shares in the capital of their subsidiaries; 10% in other cases;
- on interest — taxation at source is prohibited;
- on royalties — 3%.

Singapore – Russia

Law on ratification of the Protocol to amend the existing Double Taxation Agreement between Russia and Singapore has been signed. Amendments introduced by the Protocol are aimed at the reduction of tax burden at payment of income from one contracting state to the other. Thus, the clause on the minimum amount of investment required for the application of a reduced rate of the tax at source on dividends has been deleted from the Agreement. Now, 15% of participation in the capital of the paying company regardless of the amount of invested funds is enough to apply the reduced rate. Taxation at source in respect of interest is prohibited in all cases. Tax rate for royalties is reduced from 7.5% to 5%. After the revised version of the Agreement becomes effective, tax benefits provided by virtue thereof will make Singapore one of the most promising areas for investment.

Latvia – Cyprus

The Agreement stipulates exemption from the tax at source on all types of passive income if the payment beneficiary is a company (but not partnership) located in the other contracting states. In all other cases the rate of the tax at source on dividends and interest equals 10% and 5% on royalties. It should be remembered that since both contracting states are European Union members, the Agreement shall apply only if the EU Directive 90/435/EEC on the taxation of dividends of subsidiaries and the EU Directive 2003/49/EC on interest and royalty taxation do not apply to the legal relationship. These two regulations of the European Union set up the conditions for complete exemption from the tax at source.

The Agreement will become effective after the ratification procedure in both countries is complete and will apply to legal relationship created from January 01 of the year following the year of entry of the Agreement into force.

Jersey – Cyprus

On July 11, 2016, a Double Taxation Agreement between the governments of two island states was first signed. It was the 60th signed agreement for Cyprus and the 11th — for Jersey. According to the Agreement, all passive types of income: dividends, interest, royalties, — shall not be taxed at source. Income from the alienation of shares of companies shall also be taxed only in the country where the seller is deemed a resident. Since the Agreement provides for more favorable conditions than the EU Directive 90/435/EEC on the taxation

of dividends of subsidiaries and the EU Directive 2003/49/EC on the interest and royalty taxation, the Agreement shall prevail in relations between the residents of the two countries.

Mauritius – India

On May 10, 2016, the Governments of both countries signed the Protocol to Amend the Double Taxation Agreement, which has been in force since 1983. While currently no income from the sale of shares of Indian companies is taxed at source, the Protocol provides that the exemption will not apply to the shares acquired from April 01, 2017. Alienation of shares of an Indian company acquired after the specified date shall result in payment of tax at the rate stipulated by laws of India. A transition period from April 01, 2017 to March 31, 2019 is stipulated: shares acquired and sold during this period will be taxed at the reduced rate in the amount of 50% of income (profit) tax rate currently in force in India.

India – Cyprus

The Governments of India and Cyprus have also signed Double Taxation Agreement superseding the Agreement dated June 13, 1994. The provisions of the Agreement related to taxation of income from the sale of shares reflect the above-mentioned Agreement between India and Mauritius. Royalty tax rate has decreased from 15% to 10%. The agreement is expected to become effective on April 01, 2017, after which Cyprus will no longer have the "special jurisdiction" status as an offshore granted by the Government of India in 2013. In the event of payment from India to Cyprus, the dividend tax rate will be 15% (it is reduced to 10% if the receiver is a parent company owning not less than 10% of shares), the interest tax rate will be 10%. Dividends, interest and royalties will not be taxed in the event of payment from Cyprus to India as to the non-resident state of Cyprus under the laws of Cyprus.

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PRIVATE WEALTH

NEW ACCOUNTING STANDARDS

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In the upcoming several years radical revision of accounting standards valid in the Russian Federation is planned.

On the website of the Ministry of Finance of the Russian Federation there is a program for the elaboration of new accounting standards for 2016–2018. It stipulates both the development of new federal accounting standards and modification of current accounting provisions.

Seq. no.	Draft standard title	Anticipated standard enforcement date
	Development of new standards	
1.1	Inventory	2018
1.2	Fixed assets	
1.3	Documents and document flow in accounting	
1.4	Financial statements	
1.5	Intangible assets	
1.6	Lease	2019
1.7	Income	
1.8	Expenses	
1.9	Financial assets and liabilities	
1.10	Participation in related organizations and joint activity	

Seq. no.	Draft standard title	Anticipated standard enforcement date
1.11	Reorganization of legal entities	
1.12	Remuneration for employees	2020
1.13	Chart of accounts	
1.14	Non-commercial activity	
	Amendment of accounting standards	
2.1	Amendments of regulations on accounting (regarding simplified accounting methods)	2017
2.2	Amendments of accounting standard 1/2008 Accounting Policy of an Organization	2018
2.3	Amendments of accounting standard 3/2006 Recognition of Assets and Liabilities, which Cost is Expressed in Foreign Currency	2019
2.4	Amendments of accounting standard 18/02 Recognition of Profit Tax Expenses of Organizations	
2.5	Amendments of accounting standard 13/2000 Recognition of Government Assistance	2020
2.6	Amendments of accounting standard 16/02 Information on Terminated Activity	

On December 27, 2016 on the website of the Ministry of Finance of the Russian Federation there was information placed on the status of the accounting standards development (see page 23).

In November 2016 on the website of the Russian Ministry of Finance there were draft amendments of accounting standard 1/2008 Accounting Policy of an Organization published.

The draft stipulated introduction of the following rules:

- If a business unit having subsidiaries elaborates and approves its own standards binding upon such subsidiaries, a subsidiary chooses accounting methods based on such standards.
- An organization, which discloses consolidated financial statement drawn up in accordance with International Financial Reporting Standards or financial statement of an organization without a group, is entitled to follow federal accounting standards at developing accounting policy subject to the International Financial Reporting Standards. If application of an accounting method set forth in the federal accounting standard leads to inconsistency of the accounting policy of the organization with the requirements of the International Financial Reporting Standards, the organization is entitled to refrain from using such method.
- If there are no accounting methods specified in federal accounting standards regarding a certain issue, an organization elaborates an applicable method based on the International Financial Reporting Standards. If there is also no accounting method

Seq. no.	Project working title	Date of notification on project development	Official website of the developer, where the project is placed	Period for public discussion of the project	Date of conclusion following the examination results	Decree of the Russian Ministry of Finance on the approval of the federal standard		
						Decree date, number	Submitted for registration to the Russian Ministry of Justice	Registered in the Russian Ministry of Justice
1.	Amendments of accounting regulations (regarding introduction of simplified accounting methods for certain categories of business units)	22.03.2016	×	from 22.03.2016 to 05.04.2016	27.04.2016	16.05.2016 No. 64н	17.05.2016	06.06.2016 No. 42429
2.	Inventory	31.05.2016	http://bmcenter.ru/Files/proekt_FSBU_Zapaci	from 31.05.2016 to 15.01.2017				
3.	Fixed assets	31.05.2016	http://bmcenter.ru/Files/proekt_FSBU_Osnovniye_sredctva	from 31.05.2016 to 16.09.2016	23.12.2016			
4.	Amendments of accounting standard 1/2008 Accounting Policy of an Organization	01.08.2016	http://minfin.ru/ru/perfomance/accounting/development/project/	from 01.08.2016 to 15.01.2017				
5.	Intangible assets	27.09.2016	http://bmcenter.ru/Files/proekt_FSBU_NMA	from 27.09.2016 to 31.01.2017				

specified in the International Financial Reporting Standards for such certain issue, an organization elaborates an applicable method based on federal accounting standards for similar and (or) related issues. If there are no federal accounting standards for similar and (or) related issues, an organization elaborates an accounting method independently.

- If an accounting regulation specifies an opportunity of its voluntary application by organizations prior the maturity date of its mandatory application (early application), an organization applying such regulation early shall disclose such fact in its financial statement.

New standards shall be adopted in 2017: Inventory, Fixed Assets, Documents and Document Flow, Financial Statement and Intangible Assets. Application of standards is scheduled from 2018.

New accounting standard Fixed Assets shall replace accounting standard 6/01.

In respect of property with shelf life above one year, a company shall be entitled to resolve independently whether to recognize it as fixed assets or not. It will allow considering property with the cost above 100 000 rubles as in tax accounting, i. e. eliminating discrepancy.

In respect of other standards, it is too soon to speak about amendments because they have not passed public discussion and examination yet.

Moreover, standards will be adopted, which were previously absent from the accounting law of the Russian Federation, but were part of IFRS.

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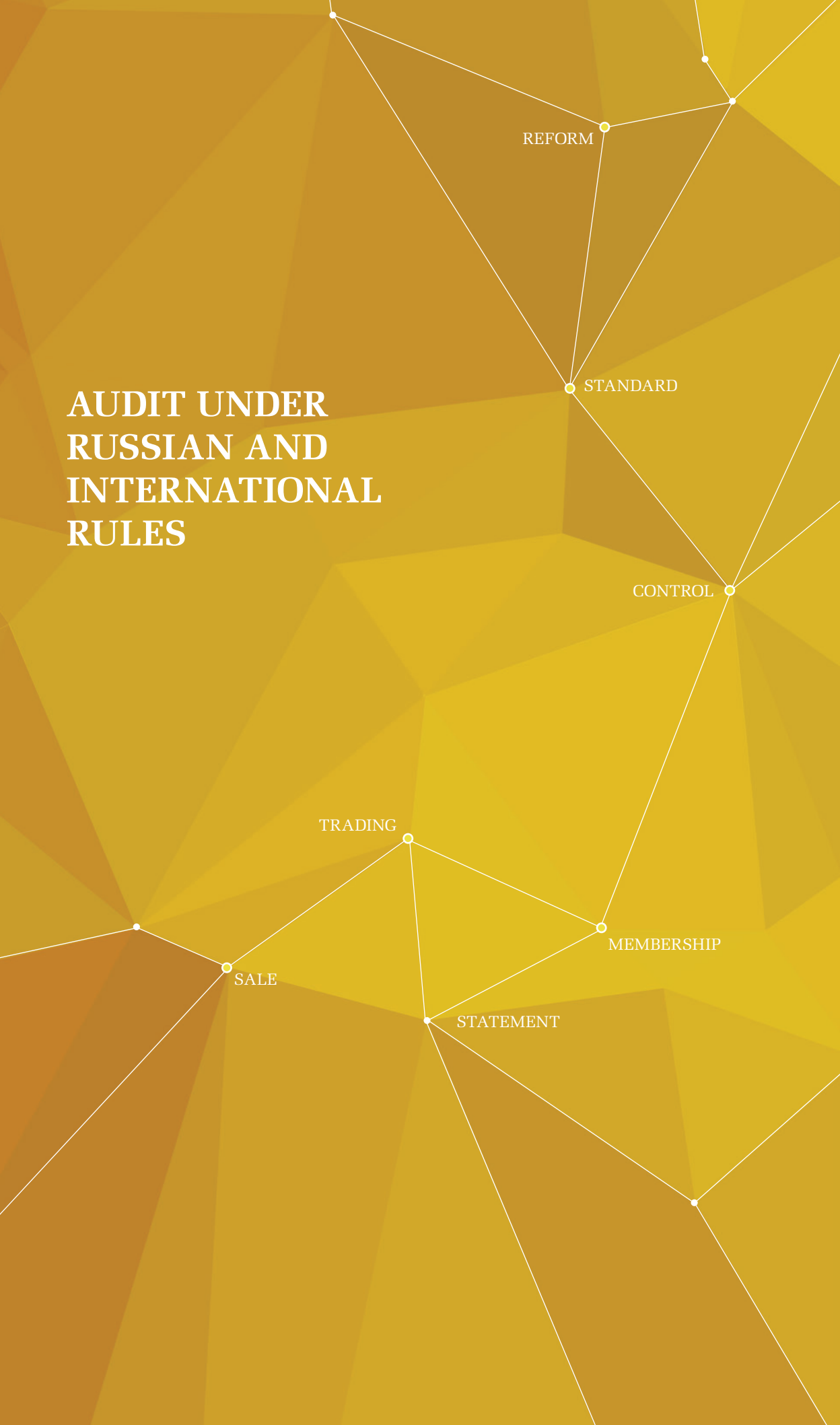

Svetlana Sviridenkova
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The last two years were a very difficult period for the audit community. It is due to reforms concerning the requirements for membership in self-regulatory organizations of auditors whose number of participants has increased by several times.

Let us remember that the membership in a self-regulatory organization of auditors is a mandatory requirement for individual auditors and audit organizations to carry out their activities.

Until last December there had been a threat of monopolization of the audit market by creating a single self-regulatory organization controlled by the Ministry of Finance of the Russian Federation. Fortunately, it did not happen. Two self-regulatory organizations retain control over the activities of auditors.

Last year was a year of change for Russian audit and particularly in terms of auditing standards. At the end of 2016 auditors were monitoring the process of approval of International Standards on Auditing in the Russian Federation and speculating whether lawmakers could translate the standards from English, carry out the expertise and introduce the new rules before the end of the year. The lawmakers made it in time — 48 international audit standards become effective from January 01, 2017 which imposes additional obligations on auditors.

Due to the enforcement of international standards, the auditors will have a lot of work to do on revising the procedure and principles of activities in the course of audits and audit-related services.

However, it should be noted that by introducing the international standards, the lawmakers have taken care of auditors and allowed them to perform audit under existing Russian standards on auditing, subject to conclusion of audit agreement in 2016, during the transition period (2017).

In fact, concern over the international standards began in mid-2015, when the Ministry of Finance of the Russian

Membership requirements before january 01, 2017	**Membership requirements after january 01, 2017**
Not more than 700 individuals or 500 legal entities.	Not more than 10 000 individuals or 2 000 legal entities.

Federation acknowledged these standards applicable to Russian reality, but the standards were finally approved only in the autumn of 2016.

Essentially, the federal auditing standards, that are still used, have been developed according to international rules which existed in the early 2000s. However, over the past years the text of the International Standards has been substantially revised and has become largely different from the Russian standards.

Aims of Reforms

The main objectives of implementation of International Standards on Auditing in the Russian Federation are to improve the quality of Russian audit and increase the efficiency of interaction between the auditor and business owners.

Understanding of goals and purposes of audit by business owners has always been a big problem both in Russian and international practice. In Russia, the management and owners of their clients perceive auditors as inspectors who come to discredit accounting and management, despite the fact that the auditor's activities pursue other goals. The auditor acts not for the benefit of tax or government authorities but for the benefit of the public. The auditor's objective is to ensure that the owners understand problems and risks of their business.

Under the laws of the Russian Federation, audit is an inspection carried out to express opinion about reliability of financial statements. In practice, the auditor not only inspects accounting statements, but also points out the errors and risks identified during the audit to the management, suggests methods of correcting such errors and ways to minimize the identified risks.

Hopefully, the issue of misunderstanding of auditing purposes by the management and business owners will be solved with the introduction of International Standards on Auditing (ISA).

Who receives information in the course of auditing under international standards?

One of the most important standards for customers of auditing services is ISA 260 Communication with Those Charged with Governance.

This standard is completely dedicated to the procedure of interaction between the auditor and persons in charge of corporate management, namely — the procedure of obtaining information from such persons and informing them about audit planning, purposes, progress and results.

The persons in charge of corporate management are a person (persons) or an entity (entities), responsible for supervision of strategic direction of activities of the entity and who have responsibilities related to ensuring the accountability of the entity. These responsibilities include supervision of financial statements.

The management is a person or persons vested with executive powers and responsible for operation of the entity.

That is, the international standards clearly distinguish between "the entity management" and "persons in charge of corporate management".

Now the responsibilities of the auditor bindingly include informing the persons in charge of corporate management at the planning stage and after completion of the audit.

Thus, at the planning state the auditor must submit the following information (international practice requires the submission of information at the stage of audit planning by way of Audit Strategy Memorandum):

- audit purposes;
- specifics of audit engagement;
- business understanding (branch, the main business risks);

- brief information about the planned scope and period of the audit, name, functions, competence and liabilities of the audit engagement manager;
- information about the possibility to modify the opinion in the event of material misrepresentations;
- need for information exchange with third parties;
- statement of responsibility of the management and persons in charge of corporate management for financial (accounting) statements of the audited entity;
- form and period of expected interaction with the management and persons in charge of corporate management (planned date of discussion of audit strategy, audit results and interim meetings, where necessary).

If securities of the customer of auditing services are admitted to organized trading (listing companies), the auditor shall also submit:

- information about key audit issues (the most significant areas of audit);
- statement of observing the Code of Ethics in terms of independence of the auditor, audit team and audit organization as a whole.

The auditor provides his/her vision of the audit process, warns the customer about the possible modification of the opinion in certain circumstances and his/her responsibility about the prepared accounting statements as well as about other material terms of the audit in the Audit Strategy Memorandum.

The specified document is intended to ensure the understanding of the process and purposes of the audit by persons in charge of corporate management.

Based on the results of audit (before the issue of audit opinion) the persons in charge of corporate management shall submit the following information:

- auditor's opinion about significant qualitative aspects of accounting practice of the entity, including estimates and disclosures in the financial statements;
- about major deficiencies in the internal control system identified in the course of the audit, including description of the deficiencies and explanation of their possible impact, description of procedure of the internal control system analysis;
- important issues that have arisen in the course of the audit and which have already been discussed or have been the subject of correspondence with the management;
- written statements requested by the auditor from the entity management;
- circumstances affecting the form and content of the audit opinion, if any (planned opinion modification, important circumstances, other information);
- identified events or conditions that may cast significant doubt upon the ability of the entity to continue as a going concern as well as disclosure of such information in financial (accounting) statements;
- other important issues that have arisen in the course of the audit, which are relevant to supervision of preparation of the financial statements under the auditor's professional judgment.

Thus, the persons in charge of corporate management receive information directly from the auditor, and the customer's management is not able to conceal the identified errors from them.

In the course of audit there can be situations when the persons in charge of corporate management are informed immediately. Detection of evidence of fraud on the part of the management or facts of failure to comply with the laws and regulations may serve as an example of such situations.

The main idea of ISA 260 is the fact that the auditor is entitled to request information not only from the customer's

management, but also from the persons in charge of corporate management, but at that point informing the persons in charge of corporate management becomes a liability of the auditor.

Need for the Internal Control System

When conducting audit, the auditor often encounters the fact that customer entities do not develop internal control system, and sometimes the management and the persons in charge of corporate management have no idea about what that system is.

With the introduction of international standards the auditor not only has to analyze the reliability and efficiency of the internal control system regulated by the customer entity, but also to specify the results of this analysis in the audit report.

What is the internal control system?

The internal control system is a group of processes developed, implemented and maintained by the persons in charge of corporate management, the management and other employees of the entity to ensure reasonable assurance regarding the achievement of goals of the entity in the area of preparation of reliable financial statement, effectiveness and efficiency of the activities and compliance with the applicable laws and regulations.

First of all, the internal control system should prevent any fraud by management of the entity, its employees and third parties. The internal control system is also designed to provide accurate and complete representation of information in the financial statements of the entity.

The efficient internal control system can be arranged by carrying out the following control actions and development of the following means of control:

- development or acquisition of high-quality and reliable information processing system;
- division of responsibilities and powers of employees who prepare accounting statements;
- development of methods of asset and liability recognition as well as ensuring the compliance with these methods;
- control over preparation of accounting statements from the management of the entity and the persons in charge of corporate management;
- development of procedures to identify the risks of fraud in the entity by the management and response to these risks, as well as the procedure of informing the persons in charge of corporate management about the said procedures;
- development of the Code of Ethics;
- development of methods of assessment of the entity's ability to continue as a going concern by the management;
- development of other control measures.

The procedure of internal control in the entity should be executed as an intra-company provision.

Besides, the development of the efficient internal control system can reduce the customer's auditing expenses, since the scope and cost of the audit can be reduced under the auditor's professional judgment with increased efficiency of the internal control system.

What remains unchanged?

It should be noted that the criteria for compulsory audit are currently unchanged.

Compulsory audit is conducted if:

- the entity is a joint stock company;
- securities of the entity are admitted to organized trading;
- the entity is a credit institution, credit reference bureau, an organization which is a professional participant of the securities market, insurance company, clearing company, mutual insurance company, trade organizer, non-state pension or other fund, incorporated investment fund, management company of an incorpo-

rated investment fund, unit investment trust or non-state pension fund (except state non-budgetary funds);

- revenue from sales of products (sales of goods, performance of works, provision of services) of the entity (except government authorities, local government bodies, government and municipal institutions, state or municipal unitary enterprises, agricultural cooperatives, unions of these cooperatives) exceeds 400 million rubles over the year preceding the reporting year or the amount of balance sheet assets exceeds 60 million rubles as at the end of the year preceding the reporting year;
- the entity (except government authorities, local government bodies, state non-budgetary funds as well as government and municipal institutions) submits and (or) discloses annual consolidated accounting (financial) statements.

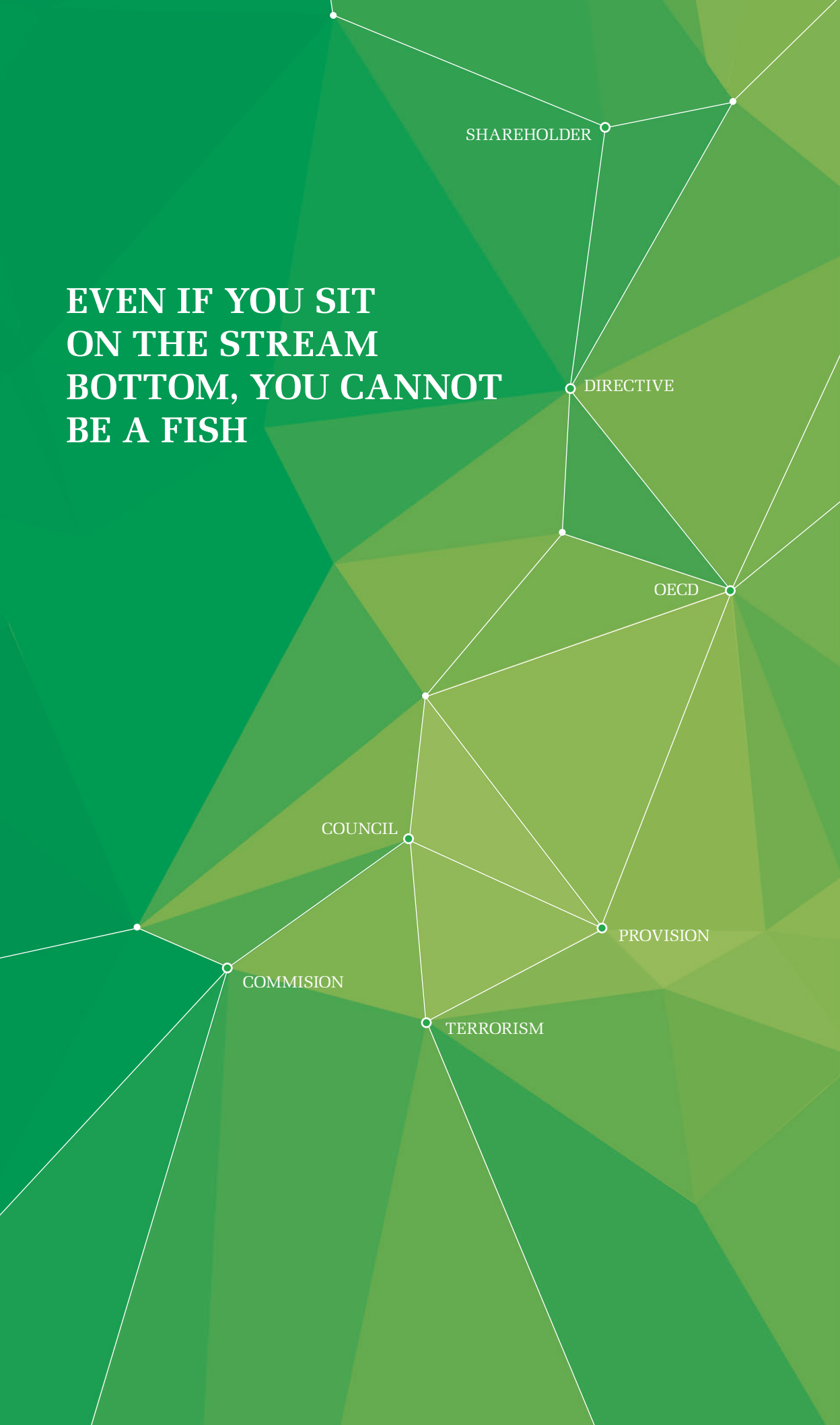
If the entity meets at least one of the said criteria, audit of financial statements is a mandatory requirement for this entity.

We would also like to remind you that when the accounting statements of the entity are subject to compulsory audit, the documentation shall not only be submitted to regulatory authorities, but also shall be published with audit opinion.

Thus, 2017 is a year of changes in audit activities. However, despite the complexity of preparation of the Internal Standards of Audit for use, such changes should bring mutual understanding between the auditor and business, which is certainly a positive factor.

Hopefully, with the introduction of the international standards public confidence in audit opinion will increase along with demand for audit services.

EVEN IF YOU SIT ON THE STREAM BOTTOM, YOU CANNOT BE A FISH



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On July 5, 2016, the European Commission published a document-proposal with amendments to the Fourth EU Directive on the prevention of the use of the financial system for money laundering or terrorism financing purposes[1], known as 4AML. These amendments became a continuation of the February statement of the European Commission that even more severe restrictions are required for an effective fight against terrorism financing.

In addition to the steps aimed directly at combating terrorism financing, measures to increase the level of transparency to prevent money laundering and tax evasion were also proposed. Among such proposals is the provision of full public access to the registers of the beneficial ownership of companies and trusts associated with the business. Information about all the other trusts, according to the proposal of the European Commission, should be included in national registers.

On December 6, 2016, the European Council adopted a directive, which provides tax authorities access to information (including about the beneficial ownership of companies), which is available to authorities responsible for anti-money laundering. This will allow tax authorities to obtain access to such information at monitoring the proper implementation of the rules on the automatic exchange of tax information.

The directive will apply from January 1, 2018. It is one of the measures adopted by the European Commission in July 2016 after the disclosure of Panama archives in April the same year.

The amendments are aimed at implementing the EU Action Plan on strengthening measures against terrorism financing. Changes to the Fourth EU Directive are introduced in part of:

1. The use of measures for enhanced inspection of customers and in-depth monitoring of customers' transactions from "high-risk third countries", as well as the responsibilities of the EU Member States to fix on the legislative level a list of such measures, subject to their maximum harmonization (however,

1. The Directive (EU) № 2015/849 of the European Parliament and of the EU Council on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, on amendment of Regulation (EU) 648/2012 of the European Parliament and the EU Council on the abolition of the Directive 2005/60/EU of the European Parliament and the EU Council and Directive 2006/70/EU of the European Commission.

the European Commission points that, in respect of customers outside the jurisdictions included in the list of high-risk third countries, the enhanced customer due diligence should be applied, but not penalties or restrictions in the form of termination of business relations).

2. Extension of provisions of the Fourth Directive on the "virtual platform" for the exchange of virtual currencies.
3. In respect of prepaid financial instruments issued in the EU Member States:
   - reduction of the threshold value for the purposes of identification of the purchaser from EUR 250 to EUR 150;
   - strengthening requirements for information reliability confirmation of such customers;
   - a ban on the use of prepaid financial instruments for the implementation of anonymous transactions on the Internet.
4. Introduction of the banks' obligations to refuse to make payments with the use of anonymous prepaid financial instruments issued in the countries outside the EU, the regime of anti-money laundering or terrorism financing, which is not very reliable.
5. Ensuring public access to certain essential information about the beneficial owners of legal entities and trusts (except for "family").
6. Extension of powers of financial intelligence units in the part of requests for information from financial institutions in order to strengthen the exchange of information between financial intelligence units for the detection of financial flows related to terrorism.
7. Provision to financial intelligence units of quick access to information about the owners of the accounts through centralized registries and electronic data retrieval systems (these mechanisms will enable to identify all the accounts of a certain person in all banks of EU member countries).

In addition, the European Commission has informed about the beginning of work on the supra-national assessment of money laundering and terrorism financing risks, as a result of which the new proposals for the improvement of national legislation and practices in "anti-legalization" field to reduce the identified risks of money laundering or terrorism financing will be prepared.

The following problems, which are to be solved in the future, should be noted:

1. Basic information about the registration of the company in some countries is not always sufficiently precise and available.
2. Requirements for reliability screening of customers are usually well performed by banks, but the case is worse with other providers of financial services. This problem is compounded by the fact that their activities are much more difficult to control than that of the banking sector.
3. Information about shareholders and members of the company is not always accurate and up to date, as companies collect information, but do not verify it.
4. At the same time, companies are often not subject to any sanctions for failure to comply with the requirements for the storage of accurate and relevant information.
5. Another obstacle to the exchange of information is the laws on data protection and privacy. They often prevent the competent authorities from obtaining timely access to adequate, accurate and current information on beneficial ownership. For example, even on the national level, the tax authorities are often unable to share information with law enforcement agencies. And in the context of information exchange at the international level these problems are only compounded.
6. Even if the exchange of information on beneficial ownership is carried

out in a timely manner (within the country or with foreign competent authorities), such exchange does not really matter, if the information is not accurate and current.

In the background of the movement of automatic tax information exchange in Europe, the European banks continue tightening, and offshore companies have come under their impact. The first tightening began with the simple requirement "to confirm a beneficiary", which, in fact, meant to provide additional documentation of income of a person who will manage the bank account. Now banks massively refuse to service offshore companies, offering beneficiaries to change the jurisdiction or close the account within 30–40 days.

A harsh change in the rhetoric began in spring of 2016, when the Baltic and Cypriot banks began to demand the provision by customers of their financial statements at the opening of corporate accounts (or from the existing corporate customers). Thus, any privacy began to evaporate before our eyes, putting a lot of freedom-loving customers in a difficult position. Let me remind you that the absence of such requirements was an advantage of working in an offshore jurisdiction.

An additional difficulty was the fact that the banks have no uniform system of requirements for the compilation of financial statements. Thus, a number of banks request the provision of financial statements in accordance with the standards of internal management accounts, other banks at the same time require to prepare statements in accordance with IFRS standards.

A number of legislative changes have caused new requirements. For example, in Latvia, paragraph 31.7 "Regulatory Rules for In-depth Screening of the Customer" of the Latvian Financial and Capital Market Commission stated that the lack of accountability is one of the signs that such customer imposes a risk for the bank. In Cyprus, national legislation amended namely paragraph 76A of AML Directive on the fact that the bank may require reports from its customers.

Banks will not stop on the requirements for the reporting provision, and, apparently, this field of business will change.

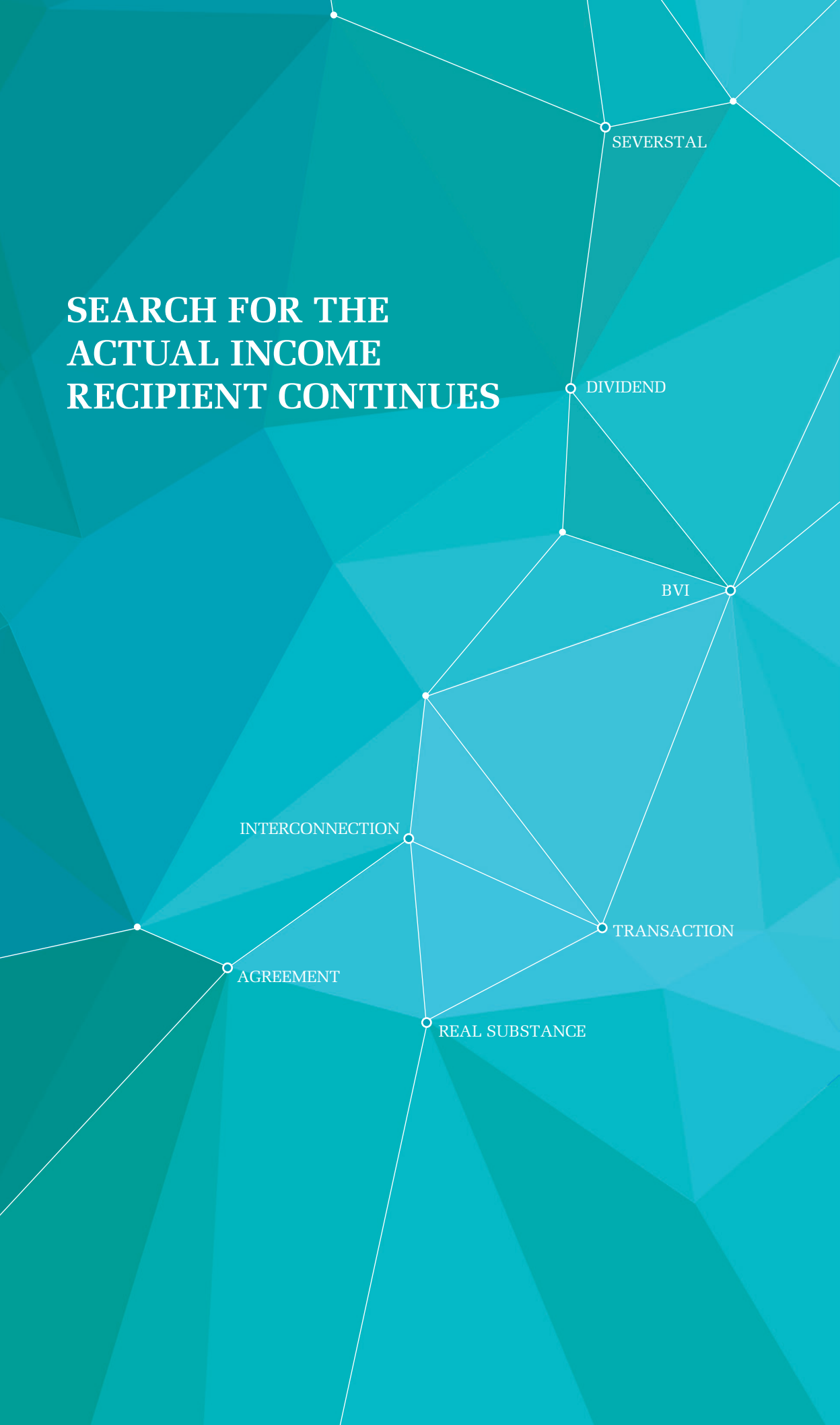
As for Russia's participation in the struggle, in 2018 a new round of FATF inspections (Financial Action Task Force) will be held in our country. The organization that monitors that the countries limit financing of terrorism and money laundering, will start the 4th stage, in the course of which it shall determine how effective "anti-money laundering" laws are.

At the end of 2018, BRICS countries (including Russia) will be again in the focus of the FATF group.

FATF plans to analyze dozens of parameters, such as the exchange and coordination with financial intelligence services of third countries, or the availability of information about the beneficial owners. Each point is calculated and checked for effectiveness.

Until 2018, Russia and BRICS partners have time to prepare. Officials expect that the introduced changes, as well as those planned in the near future, will help. Alternatively, the introduction of criminal liability for the executives of banks, which are almost always aware of everything that happens in the bank when dealing with customers, is planned. Another area of hope is the exchange of information with foreign counterparts (in particular, under the OECD standard, which is planned in the Russian Federation since 2018).

SEARCH FOR THE ACTUAL INCOME RECIPIENT CONTINUES



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The supervisory authorities are paying more attention to the practical application of the concept of the actual income recipient. Everyone has heard the recent cases against such companies as "Northern Kuzbass" (A27-7455/2010), "Naryanmarneftegas" (A40-1164/2011), "Oriflame Cosmetics" (A40-138879/2014), etc.

In 2016, one of the most notorious cases was the case of "Severstal", JSC (A13-5850/2014), on which the basic decision was made by the Arbitration Court of the Moscow District on March 15, 2016 (the final point was put by the Supreme Court of the Russian Federation on 05.08.2016, denying to transfer the case for consideration to the Judicial Board on Economic Disputes).

In this article, we propose to consider the essence of the case and have a look at the main arguments of the courts and the supervisory authority.

Briefly about the concept of actual income recipient: in accordance with the tax legislation of the Russian Federation, if an international agreement, containing provisions relating to taxation and fees, establishes other rules and regulations than those stipulated by the Tax Code, the rules and regulations of international agreements shall apply[1].

However, if the international agreement of the Russian Federation on taxation provides for reduced tax rates or exemption from taxation in respect of income from sources in the Russian Federation for foreign persons having beneficial right to the income, in order to implement this international agreement, the foreign person shall not be recognized as the beneficial owner of such income. If the foreign person has limited powers in relation to disposal of this income, exercises in respect of the said income intermediary functions in the interests of another person, without performing any other functions and without incurring any risks, either directly or indirectly paying such income (fully or partially) to the other person who at the direct receipt of such income from sources in the Russian Federation would not be entitled to the use of the provisions of the international agreement of the Russian Federation on taxation specified in this paragraph[2].

Thus, the company applying preferential taxation provided by an international agreement shall be ready to

1. Paragraph 1 Article 7 of the Tax Code of the Russian Federation.
2. Paragraph 3 Article 7 of the Tax Code of the Russian Federation.

confirm and prove that it is the actual income recipient.

That is, first of all, it has a real presence (Real Substance) and, secondly, it carries out real economic activity (transactions made by it have a real economic/business purpose).

The core of a subject: singularity of this case is in the fact that the tax authority has unraveled non-classical conduit scheme for the payment of passive income abroad (dividends, interest, royalties).

This time, multi-corporate procedures aimed at restructuring the ownership of a large Russian mining holding company ("Severstal") were under the close attention of supervising bodies.

In particular, the Russian company, being one of the shareholders of "Severstal", used shares of "Severstal" as a contribution to the share capital of its subsidiary companies in Cyprus. That is, in turn, did the same by transferring the shares of "Severstal" to their Cypriot "daughters", in which the second shareholder (having the right to corporate management) is a foreign company with a registration office in the BVI, affiliated with the Russian company.

The basis of the decision of the tax authority (and subsequently the Court) is the argument that the Russian company by performing a series of consecutive actions on introduction of the shares of "Severstal" to the authorized capital of subsidiary Cypriot companies actually made a free transfer of these shares to the address of companies registered in the BVI.

Thus, the transactions on property contribution (shares of "Severstal") were deemed null and void by the court (due to their sham nature) and rules for the transfer of property without any compensation of the Russian company to the address of a foreign company that does not have a permanent establishment in Russia were applied to legal relations between the parties.

The main arguments of the tax authority in the case were:

- Interconnection of all participants of the performed transactions;
- Multistage transactions;
- Transit nature of transactions;
- No business economic goal of the Russian company for transfer shares.

The availability of the abovementioned circumstances taken together allowed the tax authorities to conclude that the actual recipient of income from sources in the Russian Federation (in the form of shares in the Russian company) was not a Cypriot company, but companies registered in the BVI.

Because of this, the Russian company paying income (transferring shares) had to calculate and withhold tax at source at the rate of 20% (guided by art. 309–310 of the Tax Code of the RF).

Schematic chain of transactions made by the company is given in the diagram below (Fig. 1).

Notable is the fact that the courts of all instances (from the Moscow Arbitration Court to the Supreme Court of the Russian Federation) supported the position of the tax authority without leaving the taxpayer even the slightest chance of success.

This case along with other similar cases (which every year becomes more and more) is a kind of reflector and reflects current trends and attitude of regulatory authorities in relation to the schemes of tax optimization, aimed at the use of legal business structures for the purpose of the application of privileges and preferences of international tax planning, as well as in relation to the withdrawal of the Russian capital abroad. Now, this state's position in the current political and economic environment is a regularity rather than an unexpected manifestation.

Findings

Despite the fact that the institution of "the actual income recipient" in the Tax Code of the Russian Federation was introduced only in 2015, international agreements on the avoidance of double taxation previously provided for the possibility of using the advantages of agreements on the avoidance of double

taxation (including preferential rates) only in respect of persons:

- Having beneficial right to such income (interest, dividends, royalties);
- The main objective or one of the main objectives of the establishment or existence of which was not receiving benefits under the agreement.

The concept of an actual income recipient has been around for quite some time and has been used successfully in other countries (for example, in Switzerland, Austria, Germany, the Netherlands, etc.).

In this regard, you cannot blame the regulatory authorities, courts and our lawmakers that they "invented" something new, trying to complicate the life of the taxpayers by refusing in some cases to apply exemptions or preferences with only one purpose — to replenish

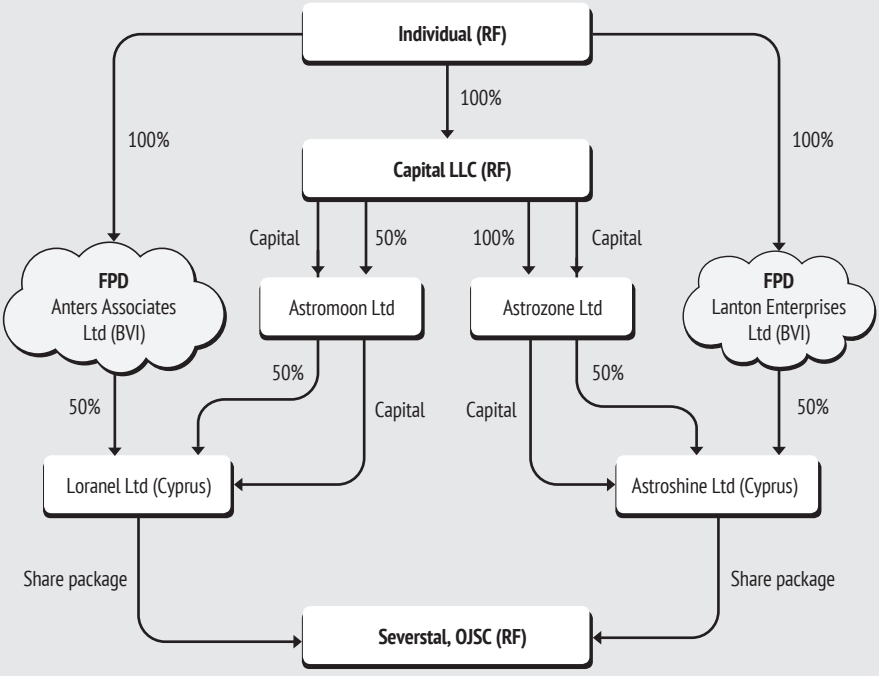

Fig. 1

the budget with new taxes. They just paid attention to the method of applying tax treaties preferences behind time, giving the way to tread the thorny path to their foreign colleagues.

So, all Russian companies engaged in financial transactions with foreign counterparties, using tax treaties benefits should be prepared for close attention from the inspection bodies. Key points on which the auditors focus in such cases and the arguments on which they base their arguments are reflected in court documents in similar cases. Therefore, in order to minimize these risks at least some way, we advise to review them and not to repeat similar mistakes.

In addition, in order to minimize the risks discussed it seems appropriate to comply with the requirements necessary for recognition of the beneficial owner of income of a foreign company, serving as the counterparty of the Russian company. These recommendations, of course, cannot be considered exhaustive and completely eliminating this risk. However, their implementation is a mandatory rule, non-compliance with which definitely jeopardizes the specified transactions.

? When and with which countries will the information exchange begin? Which information will be disclosed?

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OECD Convention on Mutual Administrative Assistance in Tax Matters, which was ratified by the Russian Federation on November 4, 2014 and came into force from July 1, 2015, contains provisions allowing the parties automatically exchange information, supposedly important for administration and assurance of compliance with the tax law and regulated by the Convention.

However, in accordance with the Convention such automatic exchange requires execution of a separate agreement between competent authorities of the parties. Multilateral Agreement of Competent Authorities on Automatic Financial Information Exchange constitutes such agreement.

Currently, the Ministry of Finance jointly with other official structures carries out adjustment of the Russian law to the innovations.

Provisions of the Convention apply to administrative assistance for tax periods starting from January 1, 2016.

In the performance of obligations under the Convention, accession to the Multilateral Agreement is planned starting from 2018. However, in 2018 information exchange shall be carried out both in respect of 2017 tax period.

It should be noted that provisions of the Convention can be applied in respect of earlier tax periods subject to the corresponding agreement executed between the exchanging countries. In particular, a tax authority informs that it has received from the competent authority of the Cayman Islands an approval of readiness to perform information exchange with the Russian FTS for the tax periods starting from January 1, 2012, both in respect of administrative assistance and tax matters.

Categories of taxes subject to the Convention:

- personal income tax, corporate income tax;
- corporate property tax;
- value added tax;
- excise duties;

- transport tax;
- other taxes.

The Convention is also applied from the moment of their institution to all identical or substantially similar taxes, which are introduced in the Contracting State after the Convention came into force.

? What is the difference between CRS and FATCA?

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Corporate services
Korpus Prava (Cyprus)

FATCA is the US law on the taxation of foreign accounts (Foreign Account Tax Compliance Act), which came into force in 2014. In accordance with FATCA, all foreign financial institutions regardless of the country of their registration and type of activity undertake to identify among their clients US taxpayers and inform the US Tax Service about them.

CRS (common reporting standard) is a document issued by the OECD within the implementation of the BEPS (Base Erosion and Profit Shifting) plan, which determines general rules of international automatic information exchange. The states, which signed agreements on automatic tax information exchange, will begin the exchange in 2017 and 2018.

It should be noted that FATCA and the CRS have quite a lot of common provisions. CRS authors have adopted most of the used terminology from FATCA. Thus, for example, definition of financial institutions entrusted with the obligation for collection and delivery of tax information is absolutely identical. Definitions of active and passive financial institutions and controlling parties and many other are also duplicated. Definition of passive income under FATCA was borrowed from the US law, and definition of passive income contained in the note

to the CRS actually duplicates it. Mechanisms for tax information collection and exchange are also similar.

However, the essence of regulation and application consequences differ greatly. FATCA law is aimed only at collection of information about US taxpayers, that is a financial institution, which collected exhaustive information about clients, will submit information only about US taxpayers as this regulation does not apply to other taxpayers. The CRS in its turn contains a requirement on global tax information exchange. Financial institutions of all states, which signed the CRS, including the Russian Federation, all EU countries and more, undertake to collect information about their clients, including their tax residency jurisdiction, which would be submitted to applicable tax authorities, whereupon tax authorities can inspect transactions of such clients for compliance with the tax law.

Summarizing the above, it may be concluded that regulation provided by the CRS directly affects tax residents of the Russian Federation, while FATCA affects only US taxpayers.

? Which party is considered a disclosing party under the CRS? Do brokers, funds and corporate providers disclose information?

Anna Senchenko
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Tax and Legal Practice
Korpus Prava (Russia)

The draft law specifies the following list of organizations obliged to disclose information under the CRS:

- credit organization;
- insurer carrying out activity for voluntary life insurance;
- professional participant of the securities market carrying out brokerage and (or) securities management, and (or) depositary activity;

- trustee under the property trust agreement;
- non-governmental pension fund;
- joint stock investment fund;
- management company of the investment fund, unit investment fund and non-governmental pension fund;
- clearing organization;
- general partner in the investment partnership;
- other organization or structure with no corporate status, which within its activity accepts from its clients monetary funds or other property for keeping, management, investment and (or) performance of other transactions to the benefit of the client or directly or indirectly at the client's cost.

Thus, brokers and separate types of funds are obliged to disclose information under the CRS, and no such obligation is specified in respect of administrative providers.

? Which consequences does information disclosure imply for a taxpayer? What will tax authorities do with this information?

Irina Kocherginskaya
Managing Director
Tax and Legal Practice
Korpus Prava

Automatic information exchange suggests automatic transfer of certain information from the disclosing party of a foreign state to Russian authorities. Then the authorities will work with such information in ordinary course using administration measures and methods set forth in the national law of the Russian Federation.

Start of the automatic exchange does not mean that at once tax inspections, additional charges, automatic charge of penalties or collection write-off will begin in respect of all taxpayers, for which infor-

mation is disclosed. Nothing of the kind is suggested. Amendments in the Tax Code, which would have allowed tax authorities perform such actions, were not introduced. As a result of automatic exchange, controlling bodies will have an opportunity to obtain during their regular activity information about accounts opened by Russian taxpayers in foreign banks, and also about foreign companies, which beneficiaries are Russian taxpayers without any additional request, which would allow tax authorities increase collection of taxes on personal income in form of retained profit of controlled foreign companies, and also on other income accumulated on foreign accounts.

Therefore, it is important to understand that for a Russian taxpayer nothing changes in terms of measures and procedures of tax control, tax authorities just have an additional easily accessible source of information. Facing the upcoming information disclosure, it is likely that the first risk group, which may suffer from transfer to the automatic exchange, will include taxpayers, which de-facto have accounts in foreign banks or controlled foreign companies, but failed to notify of them, because it is easy to adjust automatic electronic indication of such disparities in respect of such taxpayers. Close attention is expected to them, first of all. Other taxpayers can wait for inspection in the ordinary mode.

? If clients managed to close all accounts and companies by the end of 2016, will it save them from the claims of tax authorities?

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Managing Partner
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It is, probably, the most popular question of 2016: if we close all accounts prior the start of the automatic exchange, will there be any tax claims against us? Unfortunately, it's not that simple.

If a taxpayer closed all accounts and foreign companies before January 1, 2017, information about them, obviously, will not get into the automatic exchange, which actually applies to data relevant as

of January 1, 2017. But it does not mean that access to information about those accounts or companies existing before 2017 will be closed. In fact, fishing expedition still exists and any information required for authorities may be requested under old and well established procedures approved by tax agreements or agreements on assistance in civil and criminal cases. Of course, for authorities it will be much harder to collect such information in comparison to its receipt through the automatic exchange because there are a lot of different "ifs" arising at sending individual request. But harder does not mean impossible. That is why all taxpayers should understand that by closing accounts and companies before 2017 they have just covered the big brother's eye, but they haven't closed it completely. The only thing that can save taxpayers from claims of tax authorities is the expiry of the limitation period, which equals 3 years for tax offences and 2 years for currency offences. Within the limitation period risks remain.

? **Are there any plans for the extension of the list of disclosed information? Will information on company beneficiaries be disclosed, if a company has no open account?**

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For many years Organization for Economic Cooperation and Development have been elaborating methods of reaching tax transparency, and it currently has the Standard on Automatic Exchange of Information (AEOI). The purpose of this Standard is to create intergovernmental "network" on multilateral tax information exchange in order to overcome abusive practices of tax evasion. 101 states have already implemented the Standard in the national law, and Russia signed the agreement on the automatic exchange in May last year. The trend for more "transparency" and accessibility of tax information is obvious. There has been no official document specifying certain stages of ex-

tension of the list of disclosed information elaborated yet, but such ideas, one can say, "are in the air".

Of course, if a company has no open account, it is less exposed to risks related to the global disclosure of information. However, if there is a trust agreement executed between a beneficiary owner of the company and its shareholders, in certain circumstances the trust structure may be deemed a financial institution, which should submit statements on controlling parties under the Standard on AEOI. A trust can be recognized as a financial institution in cases, when the source of majority of its income is income from investments or financial assets trading or when a trust is placed under the management of another party recognized as a financial institution. Under the Standard on AEOI financial assets include securities, shares in a joint enterprise, swaps, insurance contracts and a number of other assets. That is why absence of an account opened in a financial institution does not completely protect the company from the perspective of total transparency.

? Will information on brokerage accounts and assets on brokerage accounts be disclosed?

Tatjana Frolova
Leading Lawyer
Korpus Prava Private Wealth

Within the automatic information exchange, competent authorities of participating jurisdictions will receive from financial institutions of their country information about accounts of individuals and legal entities — residents of other countries — parties to multilateral agreement of competent authorities.

Accountable financial institutions include any financial institutions, first of all, banks, but also brokers, depositaries, insurance and other companies.

Accordingly, within the automatic information exchange, tax authorities of the Russian Federation will receive data on brokerage accounts of Russian tax residents.

? If clients managed to close all accounts by the end of 2016, where should they transfer monetary funds from closed accounts? Which risks they should watch for?

Aleksey Oskin
Deputy Managing Director
Tax and Legal Practice
Korpus Prava

Closing of undeclared foreign accounts by the end of 2016 with no doubt significantly decreases the risk of disclosure of information about such accounts within the automatic information exchange in 2018 (since within the exchange, data will be disclosed on accounts open as of 01.01.2017).

However, if there is cash balance on the account, the question arises — where to transfer monetary funds before its closing? If the amount is modest and the bank is ready to give monetary funds out in cash, the question drops. Otherwise, the client, in fact, has the only option: transfer monetary funds to his/her account in the Russian bank (or to duly declared foreign account). But in this case the client should be ready to the occurrence of the following risks (due to the fact that tax authorities will obtain information on the performed transaction and on the undeclared account):

1. The risk of being held liable for failure to notify of the opening of an account.
2. The risk of being held liable for failure to submit statement on the cash flow on the account.
3. The risk of being held liable for unlawful currency transactions on the foreign account.

About the Company

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

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

Korpus Prava offers services in:

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

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

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

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

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

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