

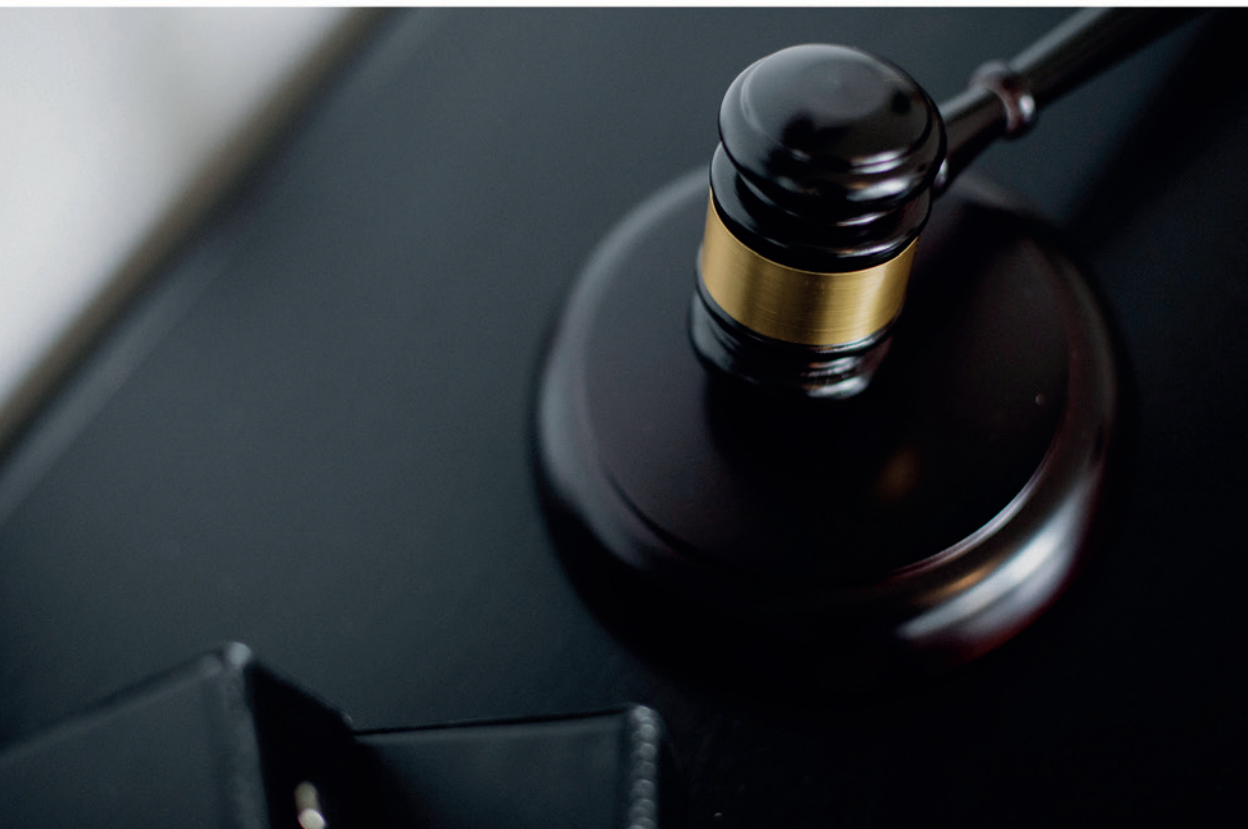
Korpus Prava

#1 / Winter, 2021

Analytics

Tax & Law Journal for Top Executives

Amendments in Legislation Enforced in 2021



Co-publisher



Alarming 2020 year for the
personal income tax

AML 6 Directive

Foreign companies.
What has changed?

Korpus Prava

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Dear readers!

We are glad to welcome you to the new edition of Korpus Prava.Analytics!

The winter issue is traditionally dedicated to the main changes in the legislation that will be relevant this year.

In 2020, lawmakers developed new conditions for taxation of personal income. The first one is the introduction of the tax on interest on deposits with Russian banks. For more information on the procedure for determining the tax base for bank deposits read the article by Tatyana Frolova, senior lawyer at Korpus Prava Private Wealth.

Another topic discussed in 2020 was the revision of Double Taxation Conventions (DTCs) concluded by the Russian Federation with Cyprus, Malta, and Luxembourg. Senior associate Anna Senchenko wrote about the consequences following the amendment or termination of the DTCs.

Last year, significant changes were made in the field of currency regulation and currency control, namely the rules on liability for non-repatriation of foreign currency earnings were changed, and liability for violation of deadlines for submitting accounting and reporting forms for currency transactions was mitigated. Junior lawyer Ekaterina Sechkareva covered changes to the currency legislation in her article.

Innovations also affected the audit practice, the threshold of income and the amount of assets, subjecting the company to mandatory audit, has been increased for small businesses. In the article by the director of the Korpus Prava audit practice, you will find detailed information about the conditions for applying these changes.

I hope that the prepared materials will be beneficial for you. We are looking forward to your suggestions and questions, which we will try to cover in the next issue or news article.

Have an enjoyable reading!

Artem Paleev
Managing Partner
Korpus Prava





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Tatiana Frolova

Leading Lawyer

Korpus Prava Private Wealth

Alarming 2020 year for the personal income tax

In 2020, changes made to the Tax Code of the Russian Federation affected mainly individuals with income above the national average. In November 2020, President of the Russian Federation signed the Law on Amendments to the Tax Code of the Russian Federation, according to which individuals who are the controlling persons of a foreign company may apply the so-called imputed CFC income tax.

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Irina Otrokhova

Chief Compliance Officer

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AML 6 Directive

AML 6 is addition step against money laundering and a very serious step. The Directive aims to combat money laundering by means of criminal law, enabling more efficient and swifter cross-border cooperation between competent authorities. It implements 22 predicate offences for money laundering which must be uniform in all Member States.

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Junior Lawyer

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Changes in the currency legislation

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Svetlana Sviridenkova

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Korpus Prava (Russia)

Here is accounting coming, rocking and sighing

In 2020, application of the standard was voluntary, now the standard has become mandatory for all organizations, except for microenterprises that apply simplified accounting methods, including simplified accounting statements, and public sector organizations.

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Anna Senchenko, LL.M.*Leading Lawyer**Tax and Legal Practice**Korpus Prava (Russia)***Foreign companies. What has changed?**

Over the past two years, a lot of changes were made both to the legislation of jurisdictions popular for incorporation of foreign companies, and at the level of double taxation conventions. This article reviews the main changes in order to give a general idea of peculiarities of such jurisdictions.

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Roman Moskovskikh*Lawyer**Tax and Legal Practice**Korpus Prava (Russia)***Review of the case law of The Supreme Court of the Russian Federation**

The Supreme Court prepared a regular practice review of the presidium and panels, and provided an explanation for sales of real estate in bankruptcy proceedings. We will cover the most interesting conclusions related to corporate disputes, antimonopoly legislation and other issues.

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Non scholae sed
vitae discimus.

We do not learn
for the school,
but for life.

ALARMING 2020 YEAR FOR THE PERSONAL INCOME TAX

DEPOSITS

CFC

INCOME

RESIDENCY

REPORT

BANK

CONTROL

**Tatyana Frolova***Leading Lawyer**Korpus Prava Private Wealth*

In 2020, changes made to the Tax Code of the Russian Federation affected mainly individuals with income above the national average.

The first unpleasant surprise was the introduction of a tax on interest on deposits in Russian banks.

In accordance with the amendments made to the Tax Code, the tax base for interest on deposits will be determined as the excess of the income amount in the form of interest over the amount of interest calculated as the product of one million rubles and the key rate set by the Central Bank at the beginning of the tax period. That is, for example, at the current key rate of 4.25% non-taxable income from deposits will amount to 42,500 rubles per year. Interest on deposits of less than 1 million rubles will not be taxed regardless of the rate.

It should be noted that the amount of all the taxpayer's deposits in the aggregate in different banks will be taken into account. For tax purposes, income will be converted into rubles at the official exchange rate set by the Central Bank of Russia on the date of the actual receipt of income on foreign currency deposits.

At the same time, deposits with a rate of less than one percent, as well as escrow accounts, will not be taken into account when determining the tax base.

Every year Russian banks will submit information about the taxable interest paid to each depositor for the past year to the tax service. Depositors will have to pay the tax on or before December 1.

In addition to interest on deposits, income received on regional and municipal bonds, federal loan bonds and other state securities of the member states of the Union State will now be charged with the personal income tax.

Coupon income on debt corporate securities of Russian issuers in rubles issued after January 1, 2017, and income in the form of a discount received upon redemption of outstanding bonds of Russian issuers in rubles issued after January 1, 2017 will also be charged with 13% tax.

In November 2020, President of the Russian Federation signed the Law on Amendments to the Tax Code of the Russian Federation, according to which individuals who are the controlling persons of a foreign company may apply the so-called imputed CFC income tax.

The imputed tax in the amount of 5,000,000 rubles is calculated based on the CFC fixed income. Thus, the amount of CFC income for 2020 is set at 38,460,000 rubles, and for tax periods starting from 2021 — at 34,000,000 rubles.

When an individual switches to paying the personal income tax from the CFC

fixed income, the number of foreign companies and the actual amount of income of such companies does not matter.

However, payment of the CFC fixed income tax does not exempt an individual from the obligation to file a CFC notification.

The procedure for submitting a CFC notification has been changed since 2021, and the deadline for submitting a notification for individuals is set for April 30 of the year following the reporting year. Together with the CFC notification the controlling person is obliged to submit financial statements of the controlled company, on the basis of which the amount of retained earnings is determined.

Simultaneously with the change in the procedure for submitting CFC notifications, fines for late submission of statements were increased. The fine was increased from 100,000 rubles to 500,000 rubles, and a new fine of 500,000 rubles was introduced for failing to submit financial statements of the CFC.

Individuals who have switched to paying the CFC fixed income tax are exempt from filing CFC statements, and the tax authority has no right to demand submission of such statements from such a controlling person.

To switch to the new tax regime, the controlling person should submit a notification of the transition to the payment of the personal income tax from the CFC fixed income to the tax authority.

The notification should be submitted to the tax authority at the place of residence by December 31 of the year that is the tax period from which the taxpayer pays the fixed income tax.

The notification of the transition to the CFC fixed income tax regarding the 2020 tax period shall be submitted to the tax authority by February 01, 2021.

After transition to paying the personal income tax from the CFC fixed income for 2020 or 2021, it is possible to abandon this procedure no earlier than in three years. In case of a second transition, as well as in case of an initial transition from 2022 and later, it is possible to abandon the procedure no earlier than in five years. Such temporary restrictions cease to apply

if the legislator increases the amount of taxable fixed income.


Amendments to the Tax Code have no restrictions on the transition of a controlling person to the CFC fixed income tax, if the company is active and its income is exempt from taxation.

Thus, the controlling person of an active foreign company has the right to switch to the CFC fixed income tax and not to submit financial statements of the controlled company to the tax authority when submitting a CFC notification, but in this case the CFC is not subject to the rules on tax exemption of the foreign company's income established by the tax legislation.

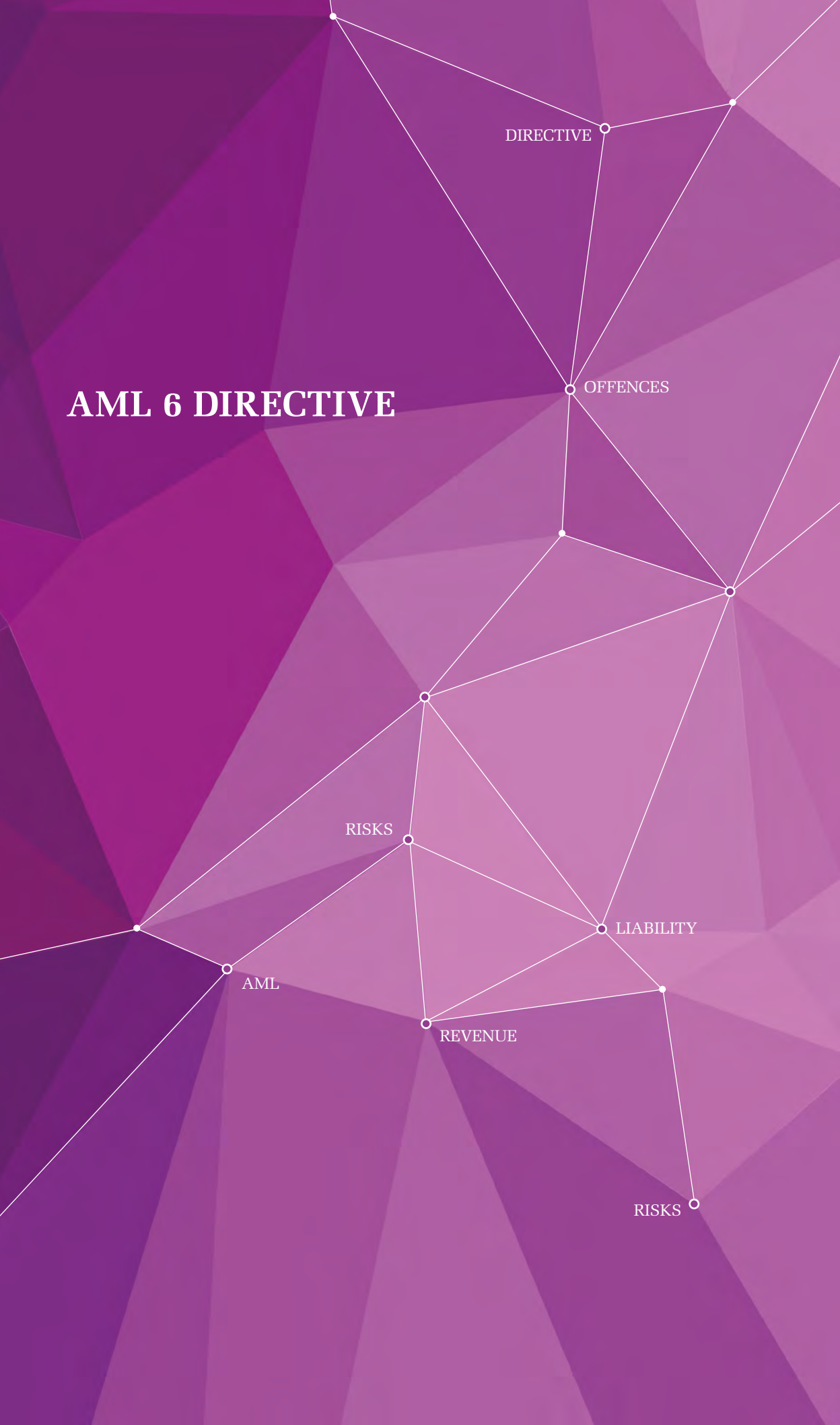
It should be noted that the payment of the CFC fixed income tax does not exempt the income of the controlling person from taxation when distributing the CFC's income. The Tax Code also does not provide for the offset of the tax amount paid upon subsequent taxation of dividends received from the CFC.

While maintaining the same procedure for the taxation of the CFC income, only the deadline for filing a CFC notification and statements changes for the controlling person of the active company.

The latest innovation was the increase in the personal income tax rate from 13 to 15%. However, this change will not affect everyone, but only those who have an annual income of more than 5,000,000 rubles.

It means that income up to 5,000,000 rubles will be taxed at a rate of 13%, and everything above that — at an increased rate. Income will be taxed following this principle starting from 2021, i.e. the tax on interest on deposits and the personal income tax at the rate of 15% will be paid for the first time by tax residents of the Russian Federation in 2022. 

AML 6 DIRECTIVE





Irina Otrokhova

Chief Compliance Officer

Corporate services

Korpus Prava (Cyprus)

AML 6 Directive — universal european list of crimes in the area of money laundering and terrorist financing

On 23 of October 2018 the European Parliament and the Council have issued the Directive (EU) 2018/1673 on combating money laundering by criminal law, so-called AML 6 Directive. The Directive aims to combat money laundering by means of criminal law, enabling more efficient and swifter cross-border cooperation between competent authorities.

The Directive implements 22 predicate offences for money laundering which must be uniform in all Member States:

- participation in an organised criminal group and racketeering;
- terrorism;
- trafficking in human beings and migrant smuggling;
- sexual exploitation;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit arms trafficking;
- illicit trafficking in stolen goods and other goods;
- corruption;
- fraud;

- counterfeiting of currency;
- counterfeiting and piracy of products;
- environmental crime;
- murder, grievous bodily injury;
- kidnapping, illegal restraint and hostage-taking;
- robbery or theft;
- smuggling;
- tax crimes relating to direct and indirect taxes, as laid down in national law;
- extortion;
- forgery;
- piracy;
- insider trading and market manipulation;
- cybercrime.

The Directive states the definition of money laundering offences which are punishable by criminal law. In accordance with the Directive the following conduct, when committed internationally, is punishable as a criminal offence:

- the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved

in the commission of such an activity to evade the legal consequences of that person's action;

- the concealment of disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity;
- the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity.

Aiding an abetting, inciting and attempting an offences mentioned above is also punishable as a criminal offence. Offences mentioned above are punishable by a maximum term of imprisonment of at least 4 years. The Directive also states aggravating circumstances:

- the offence was committed within the framework of a criminal organisation;
- the offender is an obliged entity and has committed the offence in the exercise of their professional activities;
- the laundered property is of considerable value;
- the laundered property derives from one of the offences mentioned above.

The directive introduces criminal liability for legal entities. Legal persons can be held liable for any of the offences mentioned above committed for their benefit by any person, acting either individually or as part of an organ of the legal person and having a leading position within the legal person, based on any of the following:

- a power of representation of the legal person;
- an authority to take decisions on behalf of the legal person; or
- an authority to exercise control within the legal person.

The sanctions for legal persons shall include criminal or non-criminal fines and may include other sanctions, such as:


- exclusion from entitlement to public benefits or aid;
- temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions;

- temporary or permanent disqualification from the practice of commercial activities;
- placing under judicial supervision;
- a judicial winding up order;
- temporary or permanent closure of establishments which have been used for committing the offence.

The competent authorities shall freeze or confiscate the proceeds derived from and instrumentalities to be used in the commission or contribution to the commission of the offences stated by the Directive.

Where the offices mentioned in the Directive falls within the jurisdiction of more than one Member State and where any of the Member States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offender, with the aim of centralising proceedings in a single Member State.

Member states had to bring into the force the laws, regulations and administrative provisions necessary to comply with the Directive by 3 December 2020.

As we can see AML 6 is addition step against money laundering and a very serious step. Of course, the offences shown in the Directive are already criminal offences in the most of countries, however for the first time the Directive unified all offences regarding money laundering together, introduced liability for legal persons and made Member State countries to cooperate and share information between each other not only in accordance with the rules of local criminal legislation. Money laundering seems to be not an easy business in Europe nowadays. Let's see what will be the next step. 

CHANGES IN THE CURRENCY LEGISLATION

REGULATION

CURRENCY

VIOLATIONS

REFORM

TRANSACTION

EARNINGS

**Ekaterina Sechkareva***Junior Lawyer**Tax and legal practice**Korpus Prava (Russia)*

In 2020, significant changes were made to currency regulation and currency control, as well as to liability for violations of the established procedure in this area. The overall tendency of the reform was aimed at easing the administrative burden on Russian exporters and importers in their foreign trade activities. The most significant amendments are discussed below.

Changed liability rules for non-repatriation of foreign currency earnings

For the first time, individual residents are listed as a separate category of persons held liable under Part 4, Article 15.25 of the Administrative Code of the Russian Federation. Previous revision of this regulation allowed only organizations, company officials and individual entrepreneurs to be held liable. Now, individuals who, for example, provide loans to non-residents or provide services to them, shall ensure that non-residents comply with deadlines for performing their counter-obligations to avoid risks of being brought to administrative liability.

Mitigated administrative liability for non-repatriation of foreign currency earnings

The fine for citizens, legal entities and entrepreneurs for non-crediting of foreign currency earnings was reduced and now it is from 3 to 10 percent of the amount of non-credited funds, if the amount of obligations under a foreign trade contract is determined in rubles and the ruble is specified as the currency of payment under the contract. Previously, the fine was from 75 to 100%.

In case of non-crediting of funds under other foreign trade contracts, as well as under loan agreements, the sanction for such persons shall be from 5 to 30 percent of the amount of non-credited funds.

For individual entrepreneurs and organizations, in case of non-return of foreign currency earnings under foreign trade contracts, the same gradation of fines is provided on the basis of Part 5, Article 15.25 of the Administrative Code of the Russian Federation.

At the same time, the procedure for calculating administrative fines for late

crediting (returning) of foreign currency earnings remained the same. It is calculated as one hundred and fiftieth of the key rate of the Central Bank of the Russian Federation on the amount of funds credited (returned) to the Russian Federation in violation of the established deadline for each day of delay in crediting (returning) of such funds to the Russian Federation.

Minor delay in crediting (returning) of foreign currency earnings (up to 45 days inclusive) excludes the possibility of being held liable for non-repatriation of foreign currency earnings

Prior to changes made, Russian export companies and individual entrepreneurs were often subject to penalties for any even minor violations of terms of crediting foreign currency earnings to an account with an authorized bank, which in most cases were caused by non-resident counterparties and over which in most cases a resident exporter had no influence. As a result, Russian companies and individual entrepreneurs had to bear an additional financial burden, negotiate with foreign counterparties, execute a large number of additional agreements to contracts for “minor delays”, and submit additional agreements to authorized banks for registration. Introduced changes provide Russian exporters with an additional opportunity to settle problems with a foreign counterparty with no risk of getting a fine for circumstances that resident exporters had no influence over.

A similar period of 45 days is also provided for the correction of violations committed by residents that are related to settlements under foreign trade contracts, bypassing accounts with authorized banks, in cases not provided for by the currency legislation of the Russian Federation. Administrative liability under Part 1 or Part 4, Article 15.25 of the Administrative Code of the Russian Federation is excluded if a resident within 45 days from the date of crediting funds

to his/her account with a foreign bank transfers the entire amount received to his/her account with an authorized bank. If during this period only part of the received amount is credited to an account with an authorized bank, then only the remaining funds in the foreign account will be the subject of the offense.

The legislation also introduces a new administrative offense for non-expatriation — liability for failure by a resident in due time to fulfill or terminate obligations under a foreign trade contract with a non-resident in cases where currency legislation allows non-crediting of foreign currency earnings to accounts with authorized banks. In this case, the offense is punishable by a warning or fine for legal entities and entrepreneurs in the amount of 5 to 30 percent of the amount of money owed to a resident from a non-resident, and for company officials — a warning or fine amounting from 20 to 30 thousand rubles.

Mitigated liability for violations of deadlines for submitting accounting and reporting forms for currency transactions and supporting documents

In accordance with the amendments, failure to comply with deadlines for submitting accounting and reporting forms for currency transactions (certificates of supporting documents), supporting documents and information when performing currency transactions is recognized as an administrative offense if the delay is more than 90 days. Sanctions for this element of offense include a fine for legal entities from 40 to 50 thousand rubles, and for their officials — from 4 to 5 thousand rubles.

Rules on administrative liability extended to accounts of residents with foreign financial market organizations

The legislation provides for the liability of residents for performing currency


transactions, bypassing accounts with foreign financial market organizations other than banks, in cases where the use of such accounts is provided for by the currency legislation of the Russian Federation. It also introduces liability for currency transactions involving funds illegally credited to accounts with such organizations. In these situations, a similar sanction is imposed for illegal currency transactions in the form of a fine amounting from 75 to 100 percent of its amount. If an offense is committed by an official, the fine is set in the amount from 20 to 30 thousand rubles.

Control over the use of resident accounts with foreign financial market organizations other than banks is also tightened. Failure to comply with deadlines and/or the form of notification to the tax authorities about opening or closing of such accounts, as well as about changes in their details, is considered an offense. Moreover, the Administrative Code was supplemented with provisions on liability for violations of the procedure and deadlines for reporting on the flow of funds on accounts with such organizations.

Changes concerning foreign branches and representative offices.

Article 12 of the Federal Law “On Currency Regulation and Currency Control” was supplemented with new grounds for crediting funds to foreign accounts of foreign representative offices or branches of resident organizations:

- Refund of previously made payments for returned goods, non-rendered (improperly rendered) service under transactions related to activities of a representative office or branch, except for foreign trade activities;
- Return of a deposit under a lease agreement (probably, the law refers to a security payment);
- Receipt of proceeds from the sale of property owned by a representative office or branch, except for proceeds from foreign trade activities;
- Insurance payments from non-resident insurers.

In general, most of the adopted amendments have a positive connotation for participants of the turnover. They will reduce excessive administrative pressure on residents in the field of currency regulation. 

HERE IS ACCOUNTING COMING, ROCKING AND SIGHING

BALANCE

ACCOUNTING

TAXES

INSURANCE

SUPPLIES

ASSETS

STANDARDS



Svetlana Sviridenkova

Director

Audit practice

Korpus Prava (Russia)

According to the established tradition, at the beginning of the year, we will cover the main changes in the principles of accounting and accounting reporting.

For several years, legislative changes has mainly focused on the intention to increase business transparency, universal electronic document management, and alignment with IFRS. Since 2021, a few more steps have been taken.

“Balance” income tax

Starting from 2020, organizations, except for those applying simplified accounting methods, have to apply revised Russian Accounting Regulation (PBU) 18/02 “Accounting for Corporate Income Tax Calculations”. Despite the fact that the latest revision has been put into effect since the beginning of 2020, many accountants will deal with it only in the 1st quarter of 2021 when preparing annual accounting statements for 2020. We have already discussed the procedure for applying the balance method, so there is no need to dwell on the income tax in detail, but it is worth mentioning the main aspect.

The main change in the accounting procedure for corporate income tax calculations is the change of the “cost” method to the balance method and rec-

ognition of most differences as temporary.

The revised PBU 18/02 expressly classify the following accounting events as temporary differences:

- Revaluation of assets for accounting purposes;
- Impairment of financial investments for accounting purposes;
- Differences between the rules for creating bad debt provisions;
- Recognition of estimated liabilities.

Materials and supplies inventories are now inventories

Since January 1, 2021, PBU 5/01 “Accounting of Materials and Supplies Inventories” has become invalid. Now organizations shall apply Federal Accounting Standard 5/2019 “Inventories”. In 2020, application of the standard was voluntary, now the standard has become mandatory for all organizations, except for microenterprises that apply simplified accounting methods, including simplified accounting statements, and public sector organizations.

What does this mean in real terms? Let us briefly review the main changes.

It is possible not to apply the standard to accounting of inventory held for management purposes. Now purchased office supplies may be recognized as current expenses in the period at the time of their purchase. In order to apply this approach, an organization should fix this accounting method in the accounting policy.

It is no longer possible to classify low-value fixed assets (worth up to 40,000 rubles) as materials and supplies inventories and to recognize the costs of their acquisition at the same time. If an asset is planned to be used in the organization for more than 12 months, such an asset should be recognized as a fixed asset (subject to other conditions for recognition of the fixed asset).

The cost value of inventories may now include the interest associated with the acquisition (creation) of inventories, which shall be included in the cost of the investment asset.

The actual cost of inventory is formed taking into account discounts (reduced by the discount amount). This rule shall not be applied by organizations entitled to apply simplified accounting methods.

In case inventories are acquired in installments for a long term, the cost of goods that would be paid as an immediate payment shall be recognized as the cost value; the difference should be accounted for as interest on loan obligations. This rule shall not be applied by organizations entitled to apply simplified accounting methods.

Inventories that are paid for in non-monetary funds are estimated at the fair value of the property transferred to pay for the inventories. The fair value is an estimate based on market data, rather than an entity-specific estimate. If it is not possible to estimate the property transferred to pay for the inventories at the fair value, the estimate is made at the fair value of the inventories. Organizations entitled to apply simplified accounting methods may determine the actual value of such inventories as the sum of the carrying amount of transferred assets.

Inventories received by an entity free of charge shall be estimated at the fair value of such inventories.

Terms “direct costs” and “indirect costs” are introduced to the Federal Accounting Standard. The actual cost value of the finished product shall be determined taking into account direct and indirect costs (procedures for distribution of indirect costs shall be determined by the organization itself).

Work in progress is officially classified as inventories and the procedure for forming the value of work in progress is fixed. The standard also specifies a list of costs that are not included in the cost value of work in progress and finished products.

If the capacity utilization in the reporting period has significantly decreased compared to the normal level, semi-fixed production costs shall be included in the cost value of inventories to the extent proportional to the volume of products produced in the reporting period relative to the normal level of utilization. The remaining part of semi-fixed production costs shall be included in the financial results for the reporting period as part of expenses for ordinary activities.

The procedure for subsequent evaluation has been changed. Inventories shall be measured as of the reporting date at the lower of their actual cost value and estimated sale price less costs required to prepare and sell the inventories. Organizations entitled to apply simplified accounting methods may estimate inventories as of the reporting date at the actual cost value.

Quite a lot of changes have been made, and they will significantly affect the procedure for accounting of inventories (former materials and supplies inventories). Consequences of changes to accounting policies due to the start of the standard implementation may be reflected retrospectively or prospectively at the choice of the organization (to be fixed in the accounting policy). The applicable procedure should be disclosed in the accounting statements.

New federal accounting standards are on their way

By Order of the Russian Ministry of Finance No. 204Н dated September 17, 2020, two new federal accounting standards were approved and put into effect:

- Federal Accounting Standard 6/2020 “Fixed Assets”;
- Federal Accounting Standard 26/2020 “Capital Investments”.

These standards will become mandatory from 2022, but the organization may decide to apply the standards ahead of time.

Below is a summary of the progress in the development of federal accounting standards (development of federal standards includes changes in Accounting Regulations):

As the table shows, public discussion of all projects will be completed by the end of the first quarter of 2021. Standards, which will be approved and published in the 1st half of 2021, may become mandatory starting from 2022. So far, three standards will be mandatory starting from 2022: Federal Accounting Standard 6/2020 “Fixed Assets”, Federal Accounting Standard 26/2020 “Capital Investments”, and Federal Accounting Standard 25/2018 “Lease Accounting”.

It should be noted that alignment of Russian accounting with international accounting irrevocably distances the accounting procedure from the rules of tax accounting. Therefore, hopes for unified accounting in Russian organizations have not materialized and are unlikely to materialize in the near future.

Table 1 (begin)

Working title of the project	Period of public discussion of the project	Opinion date following the expert review	Registered with the Russian Ministry of Justice	Mandatory application
Inventories	from 31.05.2016 to 29.08.2017	08.10.2019	25.03.2020 No. 57837	From 2021
Fixed assets	from 31.05.2016 to 16.09.2016	03.09.2020	15.10.2020 No. 60399	From 2022
Non-tangible assets	from 27.09.2016 to 19.09.2017	10.06.2019	Not registered	—
Lease accounting	from 29.06.2017 to 10.10.2017	20.09.2018	25.12.2018 No. 53162	From 2022
In-progress capital investments	from 24.08.2017 to 17.03.2018	03.09.2020	15.10.2020 No. 60399	From 2022
Changes to PBU 18/02 “Accounting for Corporate Income Tax Calculations”	from 05.12.2017 to 30.04.2018	16.10.2018	10.12.2018 No. 52938	From 2020
Changes to PBU 13/2000 “Accounting for Government Assistance”	from 28.02.2018 to 31.05.2018	16.10.2018	24.01.2019 No. 01/8499-ЮЛ	From 2020
Changes to PBU 16/02 “Information on Discontinued Operations”	from 30.05.2018 to 31.08.2018	22.01.2019	30.06.2019 No. 54930	From 2020

Table 1 (end)

Working title of the project	Period of public discussion of the project	Opinion date following the expert review	Registered with the Russian Ministry of Justice	Mandatory application
Documents and document management in accounting	from 31.05.2018 to 30.09.2018	No expert opinion	Not registered	—
Changes to PBU 1/2008 “Accounting Policy of the Organization”	from 23.05.2019 to 23.08.2019	27.12.2019	06.03.2020 No. 57686	From 2020
Accounting statements of the organization	from 14.06.2019 to 30.09.2019	No expert opinion	Not registered	—
Income	from 28.06.2019 to 15.12.2020	No expert opinion	Not registered	—
Changes to PBU 22/2010 “Correction of Errors in Accounting and-Reports”	from 02.09.2019 to 03.12.2019	27.12.2019	06.03.2020 No. 57687	From 2020
Non-commercial activities	c 11.09.2019 to 31.01.202	No expert opinion	Not registered	Public discussion is not completed
Amendments to regulatory legal acts on accounting	from 08.09.2020 to 08.12.2020	No expert opinion	Not registered	—
Financial instruments	from 02.11.2020 to 31.03.2021	No expert opinion	Not registered	Public discussion is not completed

Direct payments to the Social Insurance Fund, cancellation of the credit system

Since January 1, 2021, numerous regions, including Moscow, have joined the Direct Payments project.

The Direct Payments project aims at changing the payment of benefits under mandatory social insurance against temporary disability and maternity leave and applies to all insurers (employers) of employers and citizens working under contracts.

Goals and objectives of the project are:

- Guarantee of full and timely payment of benefits;

- Ensured transparency in the assessment and payment of benefits;
- No diversion of the employer’s working capital;
- Improvement of the social security of individuals, if the employer has financial problems or terminated its activities;
- Development of electronic document exchange between project participants.

From January 1, 2021, the employer shall not pay temporary disability benefits at the expense of the Social Insurance Fund (hereinafter, the Fund), but shall only submit documents to the Fund. The employee shall receive payments directly from the Fund.

Since payments are not made by the employer, the “credit” system ceases to exist. Now charged contributions to compulsory social insurance will not be reduced by the amount of employee benefits.

NB: calculation of benefits payable to employees shall remain the employer’s responsibility. The calculation procedure shall remain unchanged.

The new rules apply to the following types of benefits:

- Temporary disability benefit (including in connection with job-related accidents and occupational diseases);
- Maternity benefit;
- One-time benefit for women registered in medical institutions for early pregnancy;
- One-time child birth benefit;
- Monthly child care benefit;
- Paid leave for a person injured at work (in addition to the annual paid leave).

Now actions of the employer when receiving documents from the employee confirming the right to receive benefits are as follows:

- Receipt and verification of employee’s documents;
- Preparation of an Application for payment (recalculation) of benefits (payment of leave) in the form approved by Order of the Social Insurance Fund of the Russian Federation No. 578 dated 24.11.2017;
- calculation of the benefit payable to the employee;
- payment of the benefit to the employee for the first three days of temporary disability;
- within 5 calendar days, filling in and submitting the register of information to the Fund in the form approved by Order of the Social Insurance Fund of the Russian Federation No. 579 dated 24.11.2017;

The Fund shall do the rest: check the data and pay the benefit to the insured person.

NB: pregnant women and citizens who have been exposed to radiation will

have to apply for and receive the MIR card.

The following types of benefits may only be transferred to the MIR card:

- Maternity benefit;
- One-time benefit for women registered in medical organizations for early pregnancy;
- One-time child birth benefit;
- Monthly child care benefit;
- Payments to citizens exposed to radiation as a result of the Chernobyl disaster, the accident at the Mayak Production Association and discharges of radioactive waste into the Techa river, and following nuclear tests at the Semipalatinsk test site.

When filling out the Calculation of insurance premiums, the following issues should be taken into account:

- Code 1 (Direct Payments) should be indicated in field 001 of Appendix 2 to section 1;
- In Appendix 2 to section 1, lines 070 “Expenses for Payment of Insurance Coverage” and 080 “Expenses for Payment of Insurance Coverage Reimbursed by the Social Insurance Fund” should not be filled in;
- Appendices 3 and 4 to section 1 should not be filled in.

Calculation of accrued and paid insurance premiums for mandatory social insurance against job-related accidents and occupational diseases, as well as expenses for the payment of insurance coverage (form 4 - Social Insurance Fund of the Russian Federation):

- There is no need to fill in the data on benefits, since participants of the pilot project do not reduce insurance premiums by these amounts;
- Line 15 of table 2 should be filled in with a dash;
- There is no need to fill in table 3 and include it in the calculation.

This information is available on the official websites of the Federal Tax Service and the Social Insurance Fund.

Happy New Accounting!

This year, accountants will have a lot of work to do studying new standards and changes in accounting policies.

However, the changes introduced by the federal accounting standards will increase reliability of accounting and accounting statements.

Upon completion of the reforms, organizations that annually (or more often) transform Russian financial statements into IFRS will be able to at least reduce the number of transformation operations, and at most not to make a transformation at all, but to present Russian financial statements that meet international standards to the parent organization. This is what the reformers strive for.

A Russian accountant has always lived, lives and will live “keeping his finger on the pulse”, and this is a sign of professionalism. Happy New Accounting, colleagues!

Small business without audit

Starting from January 1, 2021, amendments to the law “On Auditing” became effective and increased the criteria for a mandatory audit of revenue and assets.


In the previous revision, an organization was required to conduct an audit of its accounting statements for 2020 if

in the year preceding the reporting year its revenue exceeded 400 million rubles, or the value of assets exceeded 60 million rubles.

The new revision sets the criteria for a mandatory audit at the level of INCOME (not revenue) in the amount exceeding 800 million rubles per year, and the value of assets exceeding 400 million rubles.

Such amendments apply to the audit of accounting statements for 2020 (since statements are prepared and audited in 2021), except for cases where the organization was required to conduct a mandatory audit according to the criteria effective before the amendments were made and the auditor began the performance of the agreement at the time the amendments to the law on auditing became effective.

In other words, if a mandatory audit of accounting statements is carried out in several stages (intermediate stages in 2020), despite the increase in the criteria, it will remain mandatory. Starting from statements for 2021, an obligation to conduct an audit shall be discontinued if the mandatory audit criteria are not met.

Therefore, small businesses are exempt from the mandatory audit, which reduces business costs, but opens the door to bad faith entrepreneurs operating in the small business field. 

FOREIGN COMPANIES. WHAT HAS CHANGED?

INCORPORATION

DIVIDENDS

DTC

CAPITAL

ROYALTY

ADMINISTRATION



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Over the past two years, a lot of changes were made both to the legislation of jurisdictions popular for incorporation of foreign companies, and at the level of double taxation conventions. This article reviews the main changes in order to give a general idea of peculiarities of such jurisdictions.

Offshore

In offshore jurisdictions, provisions on economic substance were introduced back in 2019. Such jurisdictions include, inter alia, Belize, the Seychelles, Mauritius, the Cayman Islands, Bermuda, Jersey, Guernsey, and the Isle of Man.

The Economic Substance Act introduced requirements for economic presence for all companies and limited liability partnerships that are registered and are tax residents of such jurisdictions.

However, not all companies and partnerships are required to confirm their offshore tax residency status.

Companies that are subject to this requirement and are required to provide economic presence are companies that carry out “relevant activities” defined as:

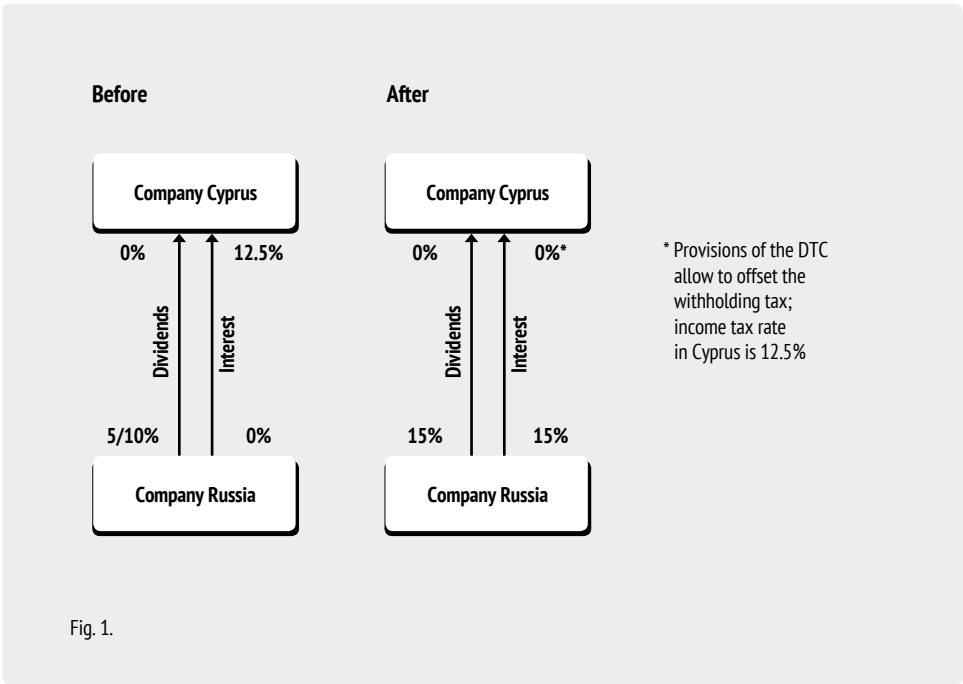
- Financial companies (banking business, insurance business, stock exchanges);

- Shipping business (shipping companies);
- Holding business;
- Business in the field of intellectual property;
- Distribution and service business.

Entities that do not fall under the law are companies that declared themselves tax residents of another jurisdiction, or companies that carry out activities other than “relevant” ones.

Requirements for the economic presence of companies are relatively abstract; it is assumed that practice will show the numerical value of criteria. Requirements include the following:

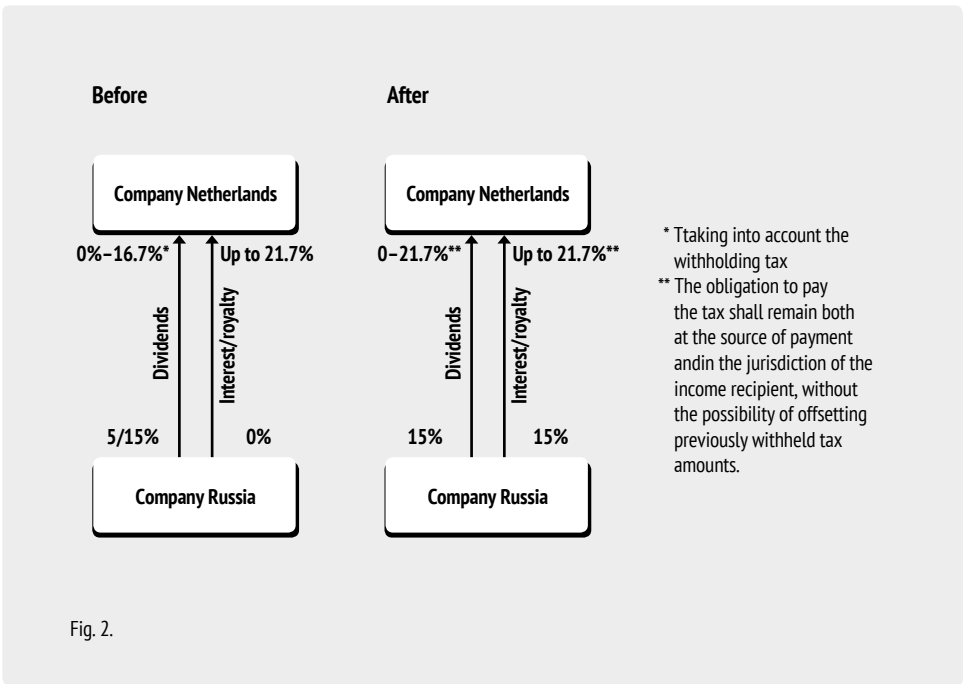
- the number of employees corresponding to the scale of the company’s business, and the employees should have the education and experience necessary to perform their work duties that correspond to the declared main activity of the company;
- the office required to accommodate staff and carry out the company’s business (presumably, it is not just about office lease, but also about workplaces equipped with office equipment, telephone connection, Internet connection);



- maintaining accounting records and preparing financial statements on a regular basis (it is obvious that an appropriately qualified person responsible for this function should be appointed);
- expenses incurred by the company should be adequate to the activities carried out by the company, both in volume and in substance. Pre-

sumably, this means that expenses should be allocated to making a profit and correspond to the declared main activity of the company.

In practice, now this is executed only as filling out questionnaires with appropriate fields being ticked, while additional supporting documents are not requested. Whether this procedure will last long is yet unclear, so it seems consistent



to record the real status and keep the documents confirming the information reflected in the questionnaires ready.


Double taxation conventions

Provisions of double taxation conventions (hereinafter, the DTC) concluded by the Russian Federation with Cyprus, Malta, and Luxembourg were revised, while the agreement with the Netherlands was not reached, so the convention will be terminated.

Consequences of amendments made to the DTC are shown in the diagram below, using the DTC with Cyprus as an example on fig. 1.

Consequences of the termination of the DTC with the Netherlands are shown in the diagram on fig. 2.

Therefore, changes to the legislation of offshore jurisdictions will affect the cost of administration of companies due to the need to submit additional reports, and companies that conduct certain types of activities will have to comply with special legal requirements.

Changes and termination of DTC entail an increase in the tax burden and raises the issue of whether it is appropriate to use a foreign company as an actual income recipient. On the one hand, foreign companies are often used as part of the tax planning mechanism, but this is not the only reason for structuring, for example, capital using a foreign company. Given the above, it seems reasonable to determine the goals that are being pursued and to critically evaluate the structure based on them. 

REVIEW OF THE CASE LAW OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

DISPUTE

BANKRUPTCY

SHAREHOLDER

DEBTOR

LAW

LIABILITY



Roman Moskovskikh

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Tax and legal practice

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The Supreme Court prepared a regular practice review of the presidium and panels, and provided an explanation for sales of real estate in bankruptcy proceedings. We will cover the most interesting conclusions related to corporate disputes, antimonopoly legislation and other issues.

Compensation for legal expenses in tax disputes

The Supreme Court clarified whether the taxpayer who managed to defend its position in a dispute with the tax authority may recover from the tax authority legal expenses in the form of the cost of legal services.

Thus, it is noted that expenses incurred by the taxpayer in connection with the collection of evidence to refute allegations of a tax offense, as well as paid legal or other expert fees for the purposes of forming a legal position are ordinary expenses borne by the taxpayer as an economic operator.

The fact that legal tax control measures and assessment of the legality of the taxpayer's actions had adverse property consequences for the taxpayer does not indicate the illegality of the tax authority's actions and does not form sufficient grounds for damage compensa-

tion. Otherwise, it would mean that according to the rules of damage compensation, expenses are compensated for the very fact of the taxpayer's participation in administrative procedures prescribed by the Tax Code of the Russian Federation.

Therefore, the reversal of the decision of the tax authority by a higher tax authority in itself does not mean that all the conditions of tortious liability listed above are fulfilled. When distinguishing between assessment of completeness and correctness of the performance of the tax obligation by the taxpayer lawfully given by the tax authority within its powers, and the unlawful infliction of harm as a result of the publication by the tax authority of a legal act following a tax audit, it is not as such the correctness of the calculation of arrears that matters, but other circumstances: whether the tax authority failed to perform public obligations which led to the fact that the taxpayer exercising its right to challenge the decision of the tax authority had to incur additional (excess) expenses to remedy violations and which caused improper additional accrual of relevant tax payments.

It should be noted that this position is also applicable to other disputes between commercial structures and state organizations.

Challenging transactions as part of the bankruptcy procedure

Declaring an organization bankrupt does not prevent shareholders from independently challenging its transactions on general grounds and seeking the return of the property to the bankruptcy estate. Thus, a shareholder wanted to invalidate a large property sale transaction made by a company without the approval of its members. However, his claim was initially dismissed as part of a bankruptcy case, which was at the stage of bankruptcy proceedings, and then in an independent dispute.

The Supreme Court included this dispute in the review and fixed several important positions on its example:

- Introduction of bankruptcy proceedings against a bankrupt JSC does not prevent a shareholder from challenging a transaction of this company on general grounds;
- Even in the event of a JSC bankruptcy, the possibility of challenging its transactions on general grounds, i.e. beyond the bankruptcy case, is not excluded;
- The status of an official receiver as a representative of the company does not make him/her the only person authorized to challenge the debtor's transactions.

Subsidiary liability

Due to COVID-19, the economic situation in the country deteriorated. According to predictions of the Chamber of Commerce and Industry, about 3 million entrepreneurs may go bankrupt due to this crisis. Some businesspersons will also face the threat of subsidiary liability. According to experts, both bankers and managers of firms whose revenue significantly dropped during the pandemic are on the line.

The Supreme Court in its review considered a case, when a holding company used a popular tax evasion scheme. One

of the companies was left with tax debts and thus turned into a “loss center”. While all the income went to an allied “profit center”, where the funds were distributed among beneficiaries. The Supreme Court called this approach “an abuse of the corporate form” and cleared that the “profit center” may be held liable for obligations of the “loss center” as a co-executor:

A person shall bear subsidiary liability for debts of a bankrupt debtor in case bankruptcy is caused by the actions of this person, involving arrangement of activities of a corporate group in such a way that the debtor is solely responsible for losses, while other members of the group receive profit. Persons who caused the damage together with the person controlling the debtor shall bear subsidiary liability jointly and severally with such a person.

It should be noted that it is not the first time that the problem of “loss centers” is raised: back in 2017, the Federal Tax Service in its letter indicated prohibition of building a business model with separation in risky and risk-free parts.

Thus, together with the new position of the Supreme Court the practice of bringing to subsidiary liability for the creation of a “mirror” business, whereto all labor and financial resources are transferred from a loss-making company, may start to form.


The Supreme Court banned the use of subsidiary liability as a tool in corporate conflicts. If a businessperson believes that his/her partners acted unreasonably or in bad faith in relation to the common cause, then it is allowed to resort to remedies provided for by the corporate legislation rather than the bankruptcy law, e.g. to challenge transactions, recover losses from them, or seek their exclusion from the company.

Filing of such a claim in essence may be regarded as an attempt by claimants to compensate for the consequences of their unsuccessful actions in entering the debtor's capital and investing in the debtor's business. At the same time, the

1. Letter of the Federal Tax Service of Russia No. CA-4-18/16148@ dated 16.08.2017 “On Implementation of Provisions of Chapter III.2 of Federal Law No. 127-ФЗ dated 26.10.2002 by the Tax Authorities”

mechanism of bringing to subsidiary liability shall not be used to resolve corporate disputes.

As a general rule, founders and members of a bankrupt company shall not participate in an insolvency case on their own. This shall be done through a

selected representative. But if a company has a corporate conflict in addition to bankruptcy, then a member may get involved in the case and independently defend his/her interests, e.g. to challenge a fictitious transaction of the debtor. 

About the Company

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

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

Korpus Prava offers services in:

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

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

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

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

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

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