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DEVELOPMENT OF THE RUSSIAN TAX SYSTEM: RESULTS OF THE FIRST HALF OF 2015 AND PERSPECTIVES

24 June 2015
Moscow

TMF GROUP Global reach Local knowledge

Dr. Frank Schauff

AEB CEO

OPENING REMARKS

Business meeting organized by the AEB Taxation Committee, 24 June 2015, MOSCOW

Dr. Alina Lavrentieva

Chairperson of the AEB Taxation Committee, PwC

OPENING REMARKS

Business meeting organized by the AEB Taxation Committee, 24 June 2015, MOSCOW

Sergey Shatalov

Deputy Minister of Finance of the RF

KEY DIRECTIONS OF THE TAX POLICY FOR 2016-2018

Business meeting organized by the AEB Taxation Committee, 24 June 2015, MOSCOW

SESSION 1

Experts: ***Nikolay Baranov,*** *Noerr****; Marina Belyakova,*** *E&Y****; Svetlana Stroykova,*** *PwC****; Alexander Kulikov,*** *Alinga Consulting*

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Overview of changes into the deoffshorisation rules

Nikolay Baranov,
Partner, Noerr

De-offshorisation changes (1/3)

Changes into the deoffshorisation rules introduced by the Law # 150-FZ (dated 08.06.2015) became effective retrospectively from 01.01.2015

CFC rules – deeper coverage of all possible situations:

- Changes related to structures (i.e. when no legal entity is established):
  - general rule – a settlor is a controlling person;
  - exemption if a settlor does not have right on income/properly of a structure;
  - other person can be treated as a controlling person if he (she) has such right.
- Rules for structures can be applied for legal entities if local law does not assume participation in capital for legal entities (e.g. may be applicable for foundations);
- Audit conclusion for CFC's FS has to be enclosed if it is obtained **voluntarily**.

De-offshorisation changes (1/3)

New exemptions for CFC rules – substantial changes in law' s structure/wording but crucial principals/criterions/ratios remain unchanged:

- Extension of jurisdictions for active companies (existence of DTT is not necessary);
- New definition and exemption for profit of active holding/sub-holding foreign companies;
- For PSAs - profit of CFC is exempt only if it is **a party** of a PSA;
- Participation via Russian **public** companies – no controlling person arises;
- Exemption for **individuals** in case of CFC's liquidation.

De-offshorisation changes (3/3)

Tax residency changes:

- BoD meetings excluded as a criterion of Russian tax residency (two other direct/main criterions remain unchanged);
- Uncertainty regarding auxiliary criterions was eliminated;
- Extension of activities when a company may **not** be treated as a Russian tax resident;
- Changes related to how foreign companies can **voluntarily** declare its Russian tax residency (e.g. foreign active holding/sub-holding companies).

Deoffshorisation: what's next?

Marina Belyakova
EY

Draft Law: additional amendments

- Audited financial statements – basis for any CFC profits calculation
- Clarification of calculation methodology for participations (including structures)
- Clarifying the determination of the first tax period for foreign companies seeking to become Russian tax residents
- Liberalizing "tax free" liquidation rule
- Certain clarifications in beneficial ownership concept

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Proposed further amendments/ clarifications

- Beneficial ownership: documents/ information that can be/ should be requested by the tax agent. Type of income and counterparty (related/ unrelated) to be taken into account
- Beneficial ownership: "look through" approach – covering uncertainties
- Tax residency: providing guidance on the meaning of top officers (executives), potentially based on examples of holding/ financing/ IP companies
- Tax residency: application of taxes other than profits tax
- All concepts: mitigating potential "old risks" arising from the change in legislation

Symmetric adjustments

Stroykova Svetlana
PwC

Symmetric adjustments

Two reasons for symmetric adjustments

1 ***Symmetric adjustments based on tax authorities audit***

2 ***Self (voluntary) symmetric adjustments***

Symmetric adjustments

Right to perform voluntary symmetric adjustments arises if

- Taxpayer has reflected an adjustment in its **amended tax return** and submitted it to tax authorities
- Taxpayer **remitted additional tax** to the budget

Other party has the right to perform the adjustment if

- Copies of **payment documents**, confirming the payment of additional tax by the counterparty are provided

Symmetric adjustments

- Symmetric adjustment is possible if the amount of loss is reduced as a result of tax audit
- If the counterparty does not provide documents confirming the payment of addition tax, then the voluntary symmetric adjustment should be **reversed**, the taxpayer should remit to the budget **not only the tax**, but also **a penalty and late payment interest**
- If the counterparty submits another amended tax return reducing the amount of tax payable to the budget –> the taxpayer should perform **a reverse adjustment**

RECENT LEGISLATION DEVELOPMENTS
Interest recognition for tax purposes

Kulikov Alexander
Manager
Audit and Tax Department
Alinga Consulting Group

Interest recognition for tax purposes: Related-party transaction (RPT)

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Marginal rates (IR) in 2015

RPT according to p. 2 art. 105.14 Tax Code (transactions with RF residents on RF territory)

IR min **= from 0% of the KR**

IR max **= up to 180% of the KR***

Other RPT

(foreign trade transactions)

IR min **= from 75% of the RR**

IR max **= up to 180% of the KR**

Marginal rates (IR) in 2016

All RPT

IR min **= from 75% of the KR**

IR max **= up to 125% of the KR**

***N.B.!**

KR - key rate of the Bank of Russia

RR - refinancing rate of the Bank of Russia

Recognition of interest in revenue/expenditures

Revenue

Rate in contract allowed if it is >= IR min
Otherwise at IR min

Expenses

Rate in contract allowed if it is <= IR max
Otherwise at IR max

Interest recognition for tax purposes: Related-party transaction

Marginal rates on foreign currency debt

Loans	IR min	IR max
Swiss franc	LIBOR CHF + 2% points	LIBOR CHF + 5% points
Japanese yen	LIBOR JPY + 2% points	LIBOR JPY + 5% points
Euro	EURIBOR EUR + 4% points	EURIBOR EUR + 7% points
Chinese yuan	SHIBOR CNY + 4% points	SHIBOR CNY + 7% points
Pound sterling	LIBOR GBR + 4% points	LIBOR GBR + 7% points
Any other currency	LIBOR USD + 4% points	LIBOR USD + 7% points

N.B.! If the interest rate on the debt is:

- Fixed - then the **KR** (LIBOR, EURIBOR, SHIBOR) is determined on the date of the receipt of funds.
- Not fixed - then the **KR** (LIBOR, EURIBOR, SHIBOR) is determined on the date of recognition of interest expense.

Interest recognition for tax purposes: Changes for 2014

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1

Currency of loan

Russian rubles

Marginal rate for December 2014

RR * 3.5

2

Separate clause sets the procedure for recognizing interest on controlled debt (CD) originating before October 1, 2014 as expenses for the period from July 1, 2014 through December 31, 2015

CD in foreign currency is determined according to the exchange rate on the reporting date, but no higher than the rate of the Central Bank of Russia on July 1, 2014.

and

The amount of equity capital is calculated excluding exchange rate differences arising when converting **CD** starting on July 1, 2014.

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Thanks a lot for your attention ☺

SESSION 2

Experts: ***Alexander Erasov****, Goltsblat BLP;* ***Tatiana Kirgetova****, Gide Loyrette Nouel;* ***Mikhail Orlov****, KPMG;* ***Arseny Seidov****, Baker & McKenzie;* ***Patrick Pohlit****, YUST;* ***Anton Nikiforov****, Pepeliaev Group;* ***Dzhangar Dzhalchinov****,Dentons.*

Business meeting organized by the AEB Taxation Committee, 24 June 2015, MOSCOW

Draft of Amendments to Russian Thin Capitalization Rules

Tatiana Kirgetova
The Head of Russian Tax Practice, a Senior Tax Associate
GIDE LOYRETTE NOUEL

Draft of Amendments to Russian Thin Capitalization Rules

The draft of Law #724609-6 regarding the amendments to Article 269.2. of the Tax Code of the RF (the "TC RF") has passed the first reading in State Duma. The key amendments are:

- **Based on the amended definition of controlled debt with reference to Transfer Pricing Rules thin capitalization rules will apply to the following types of debts of Russian legal entities:**

- ✓ ***a debt to a foreign entity which is affiliated to the borrower according to sub-points 1, 2 and 9 of point 2 of Article 105.1 of the TC RF (the "FE"), provided the FE has a direct or indirect share in the capital of the borrower;***
- ✓ ***a debt to a Russian or a foreign entity affiliated to the FE based on the above mentioned provisions of Article 105.1 of the TC RF;***
- ✓ ***a debt to an entity, provided the FE or an entity affiliated to the FE acts as a surety or guarantor or otherwise guarantees the fulfillment of the debt obligation of the Russian borrower (subject to certain exception).***

Draft of Amendments to Russian Thin Capitalization Rules

- **Thin capitalization rules will not apply, provided the following conditions are met simultaneously:**

- ✓ ***the debt is owed to an independent bank;***

- ✓ ***the above mentioned foreign entity or an entity affiliated to said foreign entity has no accounts/deposits in said bank, otherwise (i) said funds cannot be used as collateral for the debt obligation, (ii) the availability of the funds in said accounts/deposits should not be a precondition for the provision of the loan to the borrower and (iii) the amounts of the funds on said accounts/deposits and the related terms and period do not correspond to the amount, terms and period of the loan provided to the borrower.***

Draft of Amendments to Russian Thin Capitalization Rules

- **The debt-equity ratio should not exceed 3:1 (12.5:1 for banks and leasing companies), i.e. the same requirements are provided under the current legislation, however, a leasing company is considered a company in which not less than 90% of taxable income in the reporting (tax) period is from leasing activity.**

- **The debt–equity ratio should be calculated on a quarterly basis and the amount of interest deductible for profit tax purposes for the previous reporting period should not be recalculated.**

- **The debt arising due to the issuance of a Eurobond is not subject to thin capitalization rules.**

It is planned that the new rules will apply from 1 January 2016.

NEW DRAFT LAW ON TAX CRIMES

Alexander Erasov

Senior Associate, Advocate

Tax Dispute Resolution / Tax Crime Defence

Goltsblat BLP

Goltsblat BLP LLP is the Russian practice of Berwin Leighton Paisner (BLP), an award-winning international law firm with offices in London, Moscow, Abu Dhabi, Beijing, Berlin, Brussels, Dubai, Frankfurt, Hong Kong, Paris and Singapore

AEB Business Meeting: "Development of the Russian Tax System: results of the first half of 2015 and perspectives", 24 June 2015, Moscow

Recent changes

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Draft law No. 599584-6 is under consideration

- ✓ Amendments to Art. 199 of the Criminal Code (tax evasion by an organisation)
- ✓ Non-application of Art. 199 of the Criminal Code to profits of CFC in 2015-2017 (taxes must be paid)
- ✓ Amendments to Art. 173^1 of the Criminal Code

\+ **The procedure for initiating tax-related criminal cases is changed**

\+ **The list of actions falling within the scope of property and money laundering (legalisation) is expanded**

IS THIS A TREND ?

Tax crimes - myths and trends

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Myths

x Law enforcement authorities visit only malicious tax evaders

x Only the CEO and Chief Accountant may be held criminally liable

x "How will they know?"

Trends

✓ Criminalisation of tax violations (investigations and liability)

✓ Classification of tax-related crimes under other (less favourable) articles of the Criminal Code

✓ Tax crime investigation is an effective way to replenish the treasury

Preventive measures for business

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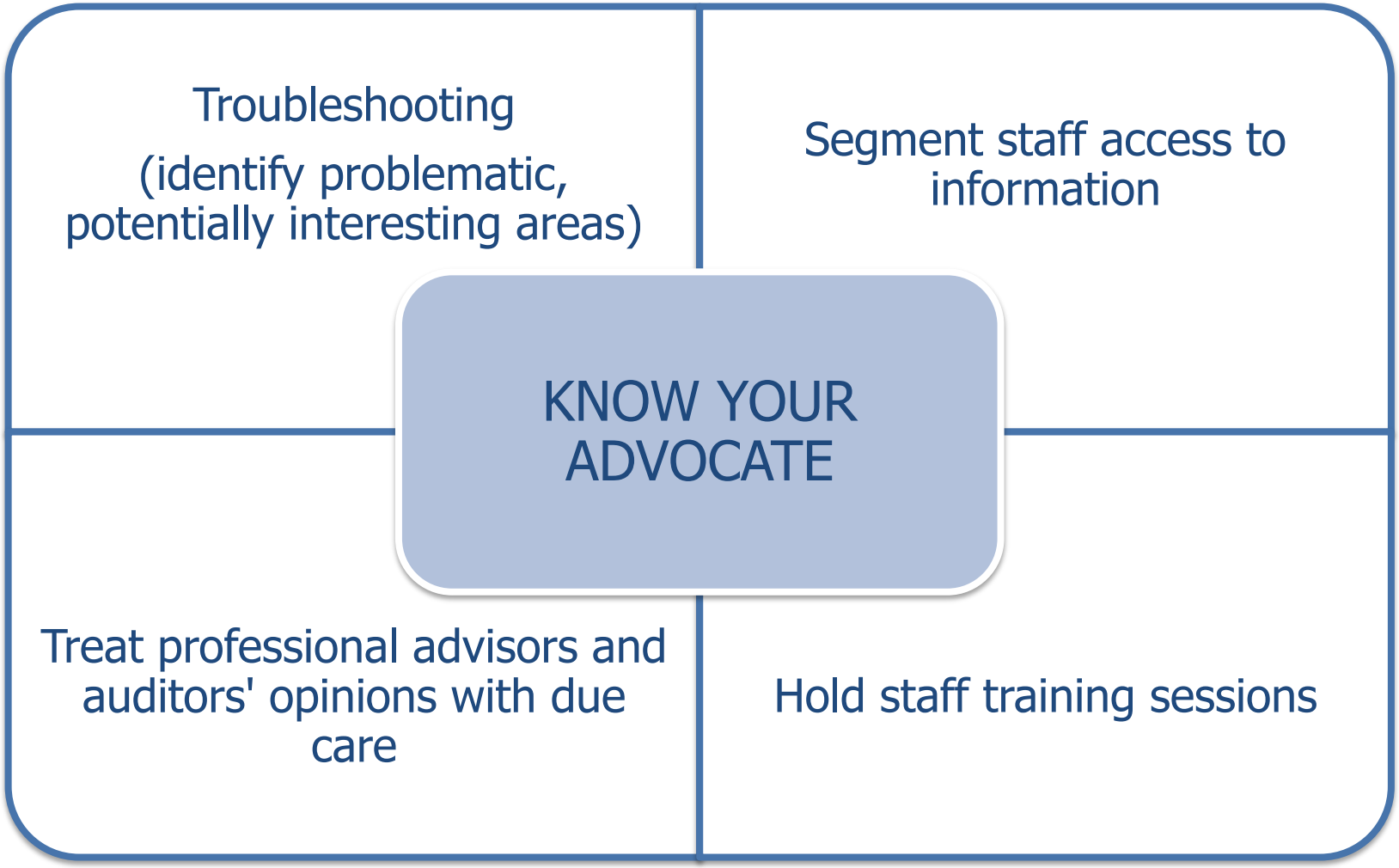

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Thank you for your time and attention

New legislative initiatives

Mikhail Orlov
Head of Tax & Legal
KPMG
June 2015

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On abuse of right (Bill 529775-6)

- Transactions shall not be taken into account for the tax purposes if the main purpose of their accounting is reduction of tax liabilities (amendments to Article 54 of the Russian Tax Code)

- A VAT invoice signed by an unauthorized or unidentified person cannot serve as grounds for the deduction of amounts of tax charged by a seller to a buyer (amendments to Article 169 of the Russian Tax Code)

- Expenses actually incurred shall not be recognized as documented expenses if the documentary evidence provided is signed by an unauthorized or unidentified person (amendments to Article 252 of the Russian Tax Code)

Improvement of tax administration(Bill 88389-6)

- Propose a new term - «list of required documents». The form of the list shall be determined by the Federal Tax Service RF
- Taxpayers shall submit all tax returns in electronic form if the number of their employees exceed 50 (now the number is 100 employees)
- Taxpayers will have the right to file all documents to tax authority in electronic form if the documents are signed with electronic signature
- The right of taxpayers to get acquainted with materials of tax audit is expected to abolish
- A new term of certificate of the performance of additional tax control measures is proposed for the Tax Code

Benecial ownership concept for Russian sourced income – Implications and challenges of the new rules

Arseny Seidov
Baker & McKenzie, Partner

Beneficial owner ("BO")

- New rules apply as of January 1, 2015, even if there is no BO requirement under a DTT (*e.g.,* Cyprus, Luxembourg)
- Extremely vague definitions: 3 different definitions of a BO in Articles 7 and 312 of the Tax Code
- No clear definition of, and no guidance on, "independent use and disposal of income", "limited authority with respect to disposal of income"
- No guidance regarding scope and extent of functions and risks that need to be undertaken by the foreign income recipient to qualify as BO
- Lack of official guidance letters or court practice on newly effective rules
- Potential requirement for foreign companies (recipients of income) to provide tax agents with BO status confirmations. Unclear form of such confirmation
- **Draft amendments** provide for:
  - removal of criterion of "actually profiting from received income and determining its economic fate" from Article 312 of the Tax Code
  - explicit application of the BO rule to foreign unincorporated structures

Documents confirming BO status

- Minfin suggested some confirmation documents that could be used (Letter No. 03-08-05/16994, dated March 27, 2015):
  1) documents (information) confirming (or disproving) rights of the recipient to dispose of or use the income at its own discretion
  2) documents (information) confirming tax liability of the foreign recipient with respect to such income, which confirms absence of the Russian withholding tax savings on subsequent transfers of income to third parties registered in jurisdiction with which Russia has no tax treaties
  3) documents (information) confirming that the recipient is carrying out actual business activity in the jurisdiction of its tax residency

- The Federal Tax Service suggested draft forms on reporting income distributed to non-BO with a BO being a Russian tax resident (Letter No. GD-4-3/6713@, dated April 20, 2015)

Domestic statutory vs. OECD (DTT) approach

- 2014 OECD Model Tax Commentaries - new "negative" definition of the BO
- OECD expressly confirmed the narrow use of the BO rule. The BO "does not deal with other cases of treaty shopping" and does not supersede "limitations of benefits" and "conduit company" rules

Recent court practice

- Still controversial, references to Minfin Letters on BO
- *Moskommertsbank Case (Case A40-100177/13)*
- *ZAO Votek-Mobile (Tele2) Case (Case A14-13723/2013)*
- Currently in favor of the taxpayer

Long-term considerations

AOA and BEPS regarding permanent establishment from a German-Russian perspective

Patrick Pohlit
Partner
YUST Law Firm

Agenda

- BEPS
  - Overview
  - Action Plan
- AOA
  - Overview
  - Profit attribution
  - Possible conflicts
- Conclusion

BEPS- Overview

GmbH

OOO

KG

OOO

BEPS- Action Plan

- OECD Action Plan on BEPS 2013

- Several actions proposed by OECD to adress tax avoidance and tax base erosion by artficial structures

- **Action 3 -** Strengthen CFC Rules
- **Action 4 -** Interest deduction and financial payments
- **Action 7 - Prevent artificial avoidance of PE status**
- **Action 8 -** Intangibles
- **Action 9 -** Risk and capital

- Public Discussion draft 31th October 2014 and public comments in 2015

Action 7: Prevent artificial avoidance of PE status (summary)

- Update of the definition of the p.e.
- Foreign companies with direct dealing from abroad but Computer Servers in the contracting country- ***no Russian issue at the moment***
- „Commissionnaire arrangements“ exclusively acting on behalf vs. ordinary course of business (4 options) – ***„Oriflame“ dependent agent?***
- adress specific activity exemptions Art.5 (4) regarding auxiliary activities e.g. warehousing (vs creation of value) – ***Art.306 (4) RTC***
- Fragmentation of activities and contracts between related parties (summarizing activities on one construction site but minimum 30 days) – ***Art.308 RTC***
- Reduction of requirements for a p.e. regarding insurance business ***–no issue***

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AOA Overview

AOA- overview

AOA Legal Sources:

- OECD „Report on the Attribution of Profits to Permanent Establishments“ 2008 und 2010 and new version Art. 7 OECD-MTC 2010
- DTT G-RF Art.7 und 9 (corresponds to OECD-MTC 2008)
- § 12, 13 AO
- § 1 Abs. 5 und 6 AStG from 26.6.13;
- Betriebsstättengewinnaufteilungsverordnung (BsGaV) from 13.10.2014
- Entstrickung § 4 Abs. 1 Satz 3 f. EStG, § 12 Abs. 1 KStG
- § 1 Abs. 3 S.9f. AStG; Funktionsverlagerungs VO
- Betriebsstätten-Verwaltungsgrundsätze
- § 1 Abs.1 -3 AStG Gewinnabgrenzungsaufzeichnungsverordnung (GAufzV)

AOA- Procedure

Procedure:

- **Step 1: hypothesising PE as separate and independent enterprise**
  - Functional and factual analysis (people function approach- 30 days)
  - Attribution of assets
  - Attribution of risks and capital (dotation capital)
  - Recognition and determination of dealings
- **Step 2: determining the PE profits as separate and independent enterprise**
  - Based on ***TP Principles***
  - Identified Dealings have to be ***at arm´s lenght***
  - Ballance sheet and P&L Statement as auxiliary calculation

Attribution of assets, chances & risks and business transactions:

- Tangible assets (e.g. equipment)
- Intangible assets (customer base, good will? Trademarks?)
- Business transactions (office rent)
- Chances and risiks (default risks?)

AOA- Procedure

Recognition and determination of dealings between head quarter and PE

- In general all economical circumstances that 3rd parties would regulate in a contract and stipulate a remuneration:
  - Using assets of the head quarter, services
  - „Entstrickung/ Verbringung“ shift of single assets which is seen as sale and therefore subject to tax (revelation of undisclosed reserves)
  - Check Risk of functional shift of the business!

- for the identified dealings have to be determined **prices at arm´s length** which create a income or expense

AOA- Procedure

Permanent establishment
Ballance sheet

Machinery	100	Dot.capital	100
Oth.Equip.	50		
Receivables	50	Debtcapital	100
	200		200

Head quarter
Ballance sheet

Property	500	Equity Capital	900
Machinary	300		
Intang.Ass.	400		
Oth.Equip.	100		
Inventories	300		
Receivables	100		
Bank	100	Debt Capital	900
	1.800		1.800

Determiníng the Dotationcapital

AOA- Possible Conflicts

- **Russian Perspective:**
  - Russian law provides TP Rules, Art. 307(9) RTC, Art.7 (2) DTT G/RF contains frames of/ for the AOA
  - Different statute of limitation (tax audit, post-assessments)
  - Does not apply undisclosed reserves doctrin (different ballance sheet items/ assessment)
- **German perspective:**
  - Applicable for DTT cases as well
  - No clear procedures (assessment, burden of proof on taxpayer)
- **International perspective**
  - DTT does not contain appropriate adjustment clauses in Art.7 (AOA) and Art.9 DTT (TP)

Agenda

- BEPS
  - Overview
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  - Overview
  - Procedure
  - Possible conflicts
- Conclusion

Conclusion

- **BEPS Action 7**
  - Already tendencies in Russian legislation and jurisprudence
  - Very restrictive PE definition
  - Most possible impact agency model
- **AOA**
  - Possible impact and double taxation
  - Adaptation in the DTT necessary
  - appropriate adjustments clauses in Art.7 and Art. 9 DTT G/RF

Market price concept in court practice

Anton Nikiforov
Pepeliaev Group

Questions

1. Who checks the market prices

Ruling No. MMB-7-13/309@ of the Russian Federal Tax Service dated 5 June 2014 (clause 3.12)

Letter No. 03-01-18/8-145 of the Russian Ministry of Finance dated 18 October 2012.

Resolution No. A41-36288/14 of the 10th State Commercial ('Arbitration') Appeal Court dated 12 February 2015

Resolution No. A41-32826/14 of the 10th State Commercial ('Arbitration') Appeal Court dated 26 January 2015

Decision No. A40-204810/14 of the Commercial ('Arbitration') Court for Moscow dated 11 June 2015

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Questions

2. Market conditions and economically justified expenses

Decision No. A40-188569/1475-788 of the Commercial ('Arbitration') Court for Moscow dated 29 May 2015

Questions

3. Tax assessment based on the market price

3.1. Article 31 of the Russian Tax Code (clause 1(7))

Resolution No. 57 of the Plenum of the Russian Supreme Commercial ('Arbitration') Court dated 30 July 2013

Resolution No. A40-78665/12 of the Federal Antimonopoly Service for the Moscow Region dated 5 August 2014

3.2. Unjustified tax benefit

Resolution No. A40-138879/14 of the Commercial ('Arbitration') Court for the Moscow Region dated 11 June 2015

Resolution No. A40-143354/13 of the Commercial ('Arbitration') Court for the Moscow Region dated 30 April 2015

Recent Developments in Practice in Tax Disputes

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Oriflame Cosmetics (Case № A40-138879/14)

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- A Russian company of a multinational group paid royalties to a foreign affiliate, a Netherlands company, for the use of a trademark, know-how and trade name
- Royalties were deducted from sales revenue of the Russian company for CIT and VAT purpose

Court findings: the company received unjustified tax benefit in the form of the deduction of royalties payable to a foreign affiliate, as demonstrated by the following facts:

- **the Russian company was under total control of a Luxembourg company in the group and cannot be treated as an independent company, the Russian company positioned itself on the market as a division of the Luxembourg company, therefore, the Russian company must be treated as a dependent agent of the Luxembourg company (permanent establishment)**
- **The Netherlands company channeled almost all amounts received from the Russian company through to the Luxembourg company with minimal tax burden**
- **There was no reasonable business purpose to paying royalties for the Russian company (there was no know-how as defined in Russian civil law, payments for trademark use were not necessary as the goods had been already imported into Russia).**

Astellas (Case № A40-155695/12)

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- A foreign company produced and sold pharmaceuticals, including in the RF
- Product sales in Russia were conducted via an affiliated distributor, title to the goods passed before crossing the RF border
- A non-commercial representative office of the foreign organization registered the preparations for import into the RF
- Registration documents were delivered directly to the distributor
- Promotion and advertising of goods and trademarks were carried out by the taxpayer without direct sales in the RF (sales through a distributor)

Court findings: the foreign organization carried out preparatory and ancillary activities in the RF to the benefit of a third party (distributor), and therefore its activities formed a PE

TD Petelino (Case № A40-12815/15)

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- The Russian company entered into a sublicense agreement for use of a trademark with a Cyprus company, which held rights to the trademark under a license agreement with a rights holder registered in Bermuda; all companies involved are affiliates
- When paying the royalties under the sublicense to Cyprus, the Russian company applied the tax exemption for income of foreign organizations provided in the Treaty.

Court findings: The sole purpose of the parties to the license and sublicense agreements was for the Russian company to derive an unjustified tax benefit through non-payment of withholding tax. Structuring the granting of trademark rights in this way could not follow any business purpose other than saving on taxes. The Russian company was able to conclude a license agreement directly with the rights holder in Bermuda, without involving the Cyprus company in the transaction

Kashirskiy Dvor (Case No. A40-72507/14)

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- The Russian company took out a loan from an Austrian company, deducted interest on the loan and did not pay withholding tax on it citing a Double Tax Treaty
- The tax authority claimed that the loan is subject to Russian thin capitalization rules as the lender is an affiliate of the Russian company

Court findings: There is an exhaustive list of grounds for application of Russian thin cap rules, and they cannot be applied to loans from foreign affiliates of a Russian taxpayer that do not own shares in the taxpayer, especially affiliates that are not "sister" companies of the taxpayer. Furthermore, the application of these rules to loans from "sister" companies is justified only if it is proven that the loan was given and the interest collected under the control of a parent company.

Komi Teplovaya Kompaniya (Case No. A29-10095/2014)

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- The Russian company provided an interest-free loan to another Russian company
- The tax authority claimed that by force of Russian transfer pricing rules (Section V.1 of the RF Tax Code) the lender should pay corporate income tax calculated on the basis of a legal fiction that the borrower paid interest at a market interest rate determined on the basis of the SPARK database

Court findings: A territorial tax inspectorate has no authority to check transactions between Russian companies for compliance with Russian transfer pricing rules (Section V.1 of the RF Tax Code), such checks may be conducted by the Federal Tax Service only. The tax inspectorate did not prove that the SPARK database may be used as a market indicator for interest rates on non-bank loans.

EVRAZ Metal Inprom (Case No. A53-16670/2014)

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- The foreign parent of a Russian company, a BVI company, provided free-of-charge financial assistance to the said Russian company via a Cypriot company
- The initial source of funds, the tax authority asserted, was loans from a Russian company

Court findings: Provision of financial assistance by *de jure* a foreign parent of the taxpayer was a cover for a tax scheme, the source of financial assistance was in reality another Russian company in the group that was not a shareholder in the taxpayer; the tax exemption provided by Article 251(3.4) and (11) of the RF Tax Code does not apply.

Gasheka Realty (Case No. A40-162157/14)

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- The taxpayer applied a tax exemption provided by Article 4(1) of the Law of Moscow on Corporate Property Tax to a parking structure comprising a part of an office building owned by the taxpayer.

Court findings: The scope of the tax exemption in question covers only parking structures that are separate buildings and does not extend to parking structures which are parts of other buildings and constructions, e.g., business or shopping centers.

Torgoviy Centr (Case No. A41-68182/14)

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- The company made site improvements and repaired a road around a building under construction in its ownership, however the site (land plot) and the road were public property

Court findings: The taxpayer had the right to deduct the expenses on site improvements and road repairs for CIT purposes, as well as to deduct the relevant input VAT despite not owning the site or road, since these expenses were necessary to facilitate the taxpayer's commercial activity of letting premises in the finished building.

Khleborob-Plus (Case No. A48-2629/14)

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- A company suffered a theft of fixed assets and did not "restore" input VAT which had been previously deducted

Court findings: As the taxpayer had not carried out an inventory check and reflected the loss of fixed assets in its accounting books, the taxpayer was under obligation to "restore" input VAT paid for stolen equipment despite the fact that criminal proceedings were instigated at the taxpayer's request.

Mobis Parts CIS (Case No. A40-142537/14)

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- A company used special software provided by a supplier of goods without paying a specific fee for it
- A tax authority claimed that the use of software must be treated as a gratuitous provision of intellectual property rights increasing the company's corporate tax liability

Court findings: The fact that the supplier did not charge a fee for use of software does not mean that the taxpayer used it on a gratuitous basis, since the software was used for the purchase and resale of goods by the taxpayer and the price of goods included the value of the software. The absence of specific consideration for software rights in such circumstances cannot lead to the imposition of additional tax liability on the taxpayer in the form of CIT on the value of the software rights.

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Q&A