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**Business meeting organized by the AEB
Taxation Committee**

DEVELOPMENT OF THE RUSSIAN TAX SYSTEM: RESULTS OF THE FIRST HALF OF 2018 AND PERSPECTIVES

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Chairperson of the AEB Taxation
Committee, PwC

OPENING REMARKS



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Daniil Egorov

Deputy Head, Federal Tax Service

SESSION 1



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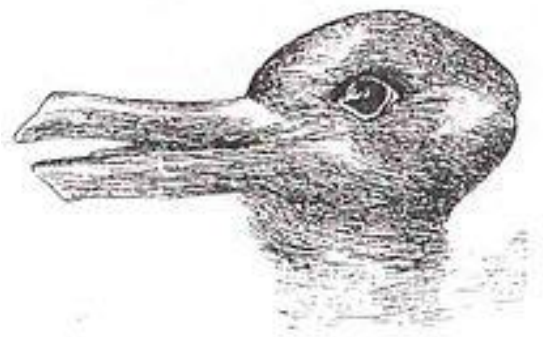
- **Applying Article 54.1 – recent experience**
- **Beneficial ownership concept: new clarification by the Federal tax Service and new approaches**
- **Intra-group services - practice development, OECD discussion, electronically supplied services**

APPLYING ARTICLE 54.1 – RECENT EXPERIENCE

Maria Semenova

Mazars

Any paradigm shift?



A paradigm shift could cause one to see the same information in an entirely different way (Thomas Kuhn)

Recommendations: for tax audits started before 19 August 2017 follow Resolution #53 concepts, pick up additional arguments in the court practice that are in line with article 54.1 of the RF Tax Code.

Crisis ?

- New grounds to challenge tax benefits crystallized in the court rulings during 2014-2017
- BUT: consistent and successful application of Resolution #53

Revolution?

- Adoption of article 54.1 of the RF Tax Code starting 19 August 2017
- Optimistic FTS Letter of 16 August 2017
- BUT: Resolution #53 is not abolished

New paradigm maturity

- Expected in 3-5 years
- Explicit ban on retrospective application of article 54.1 of the RF Tax Code

New paradigm launch?

- BUT: FTS Letter of 3 November 2017 ruled on due care when selecting suppliers; consistent application of Resolution #53

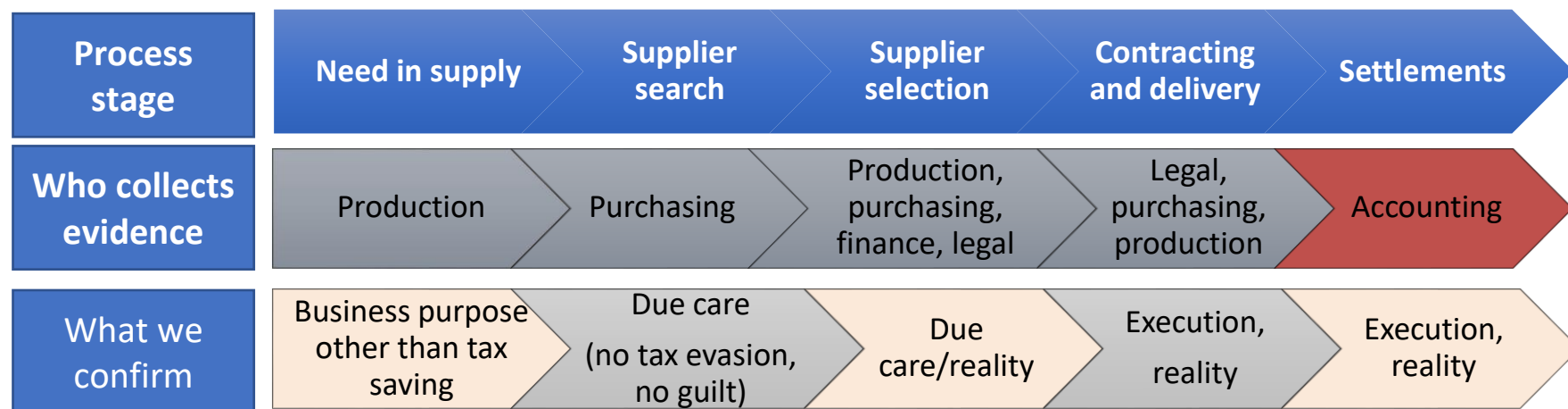
Taxpayers unfulfilled hopes

Area	Expected	Appeared
Stability	Codification of Resolution #53	New concepts, partially tested in the court
Transaction purpose	Tax evasion should not be the only purpose	Tax evasion should not be main purpose
Formalism	Minor discrepancies and omissions will be tolerated	Documentation of execution by subcontractors is an open question
Tax assessment	Moderate approach to imposing additional tax (reconstruction)	Aggressive approach to imposing additional tax (all compromised deductions should be cancelled)
Due care when selecting suppliers	No longer relevant	Relevant to support the absence of guilt
Compliance requirements	Less compliance efforts	More compliance efforts, additional compliance areas

Recommendations: be prepared to more scrutiny by article 54.1 of the RF Tax Code compared to Resolution#53 provisions.

Compliance score Operations - Accounting

4:1



Recommendations: keep operational people in the loop of compliance requirements, elaborate and formalize the supplier selection policy.



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FEDERAL TAX SERVICE CLARIFIES BENEFICIAL OWNERSHIP CONCEPT

Anna Modyanova

PwC

What happened?

Federal Tax Service letters on Beneficial owner (BO):

- 17 May 2017 № CA-4-7/9270@
- 28 April 2018 № CA-4-9/8285@
- tradition?

Key aspects:

- tax authorities may not identify BO to deny treaty benefits
- specific criteria of conduit foreign companies
- wide approach – not only to payments abroad

Conduit Company

- Passive income from Russia
- Following transfer of cash to others
- No/insufficient “formal” expenses
- No financial/commercial risks
- Insignificant number of employees/no control&management
- No/minimal tax on income from Russia

Special attention to:

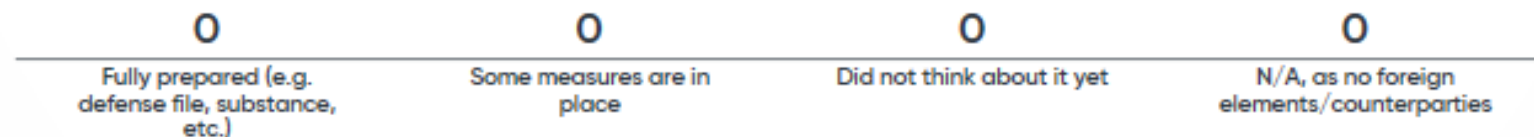
- what is insufficient income,
- investment activity via subsidiaries set up,
- minutes of BOD meeting with general description,
- group foreign companies

Taxpayer to provide evidence of economic feasibility

Go to www.menti.com and use the code **22 88 89**

 Mentimeter

How do you assess your level of preparation to BO challenge by the Russian tax authorities?



Slide is not active

Activate



0



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Alexander Erasov

Bryan Cave Leighton Paisner

POSITIVE

Year	Case	Case no.	Cross-border YES/NO	Additional tax charges, mRUB
2016	<i>Eurochem-Belorechenskie Minudobreniya</i>	A32-5124/2013	NO	37
2016	<i>Tuapse Marine Commercial Port LLC</i>	A32-30480/2014	NO	20
2015	<i>Trade House OAT</i>	A55-7982/2014	NO	12
2014	<i>GM Daewoo Auto and Technology CIS</i>	A40-122536/13	YES	6
2014	<i>Teza Tep</i>	A40-142823/13	YES	5
2014	<i>Amdocs Solutions Ltd</i>	A40-149702/13	YES (“agent” VAT <u>only</u>)	69

NEGATIVE

2017	<i>Rusdzhm</i>	A11-9880/2016	YES	8
2016	<i>Bonduelle-Kuban</i>	A32-8522/2015	YES	31
2015	<i>Guardian Steklo Rostov</i>	A53-871/2015	NO	4
2013	<i>MUMT</i>	A40-62131/12-91- 355	YES	174
2013	<i>British American Tobacco-STF</i>	A40-60626/2012	NO	52
2013	<i>Cargill Yug</i>	A32-38700/2011	YES	172

How They Attack Intra-group Services

- Real provision and business reason of services are **not confirmed**
- Documents **contradict** information from other sources
- **Duplication** of services (functions)
- Services are **dictated** by other companies and **not necessary** for the particular company
- Changes to the service fees **do not correspond** to the volume of services
- Received service fees are **transferred** further
- Payments for services are in fact “**cost sharing**”
- **Hidden dividend** distribution (especially in loss-making position)

How to Defend Yourself

- ✓ Comprehensive and consistent **contract** (each and every provision must be complied with)
- ✓ Detailed acts of acceptance and reports indicating **particular services** (do not copy-paste!!)
- ✓ Consistent, full and uncontroversial **testimonies** from witnesses
- ✓ Transparent **pricing**
- ✓ Amount of payment adequate to **deliverables**
- ✓ Always bear in mind **separate legal entity** concept
- ✓ Primary documents are not enough – multiple other piece of **evidence** should be handy
- ✓ Do your homework carefully – prepare the **DEFENCE FILE** beforehand



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Anton Nikiforov

Pepeliaev Group

SESSION 2



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- **Tax reform - news settings**
- **Transfer pricing - recent news**
- **Key court decisions on tax issues**



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Nina Goulis

KPMG

Tax law update (1/3)

		Status	Next steps
1	№489169-7 «On the change of the VAT rate and the rate of insurance premiums for compulsory pension insurance»	I 03.07.2018	Amendments 08.07.2018
2	№249505-7 «Improvements in tax administration» (significant amendments to II reading)	I 06.12.2017	II 12.07.2018
3	№442400-7 «On particular taxation issues» (amendments to II reading)	I 19.06.2018	II 19.07.2018
4	№325651-7 «Introduction of tax on additional income from the extraction of hydrocarbon raw materials»	III 05.07.2018	The Federation Council TBD
5	№481297-7 «The procedure for determining the PIT tax base for the bonds sale (redemption)»	II 05.07.2018	III TBD
6	№488862-7 «On international companies»	Consideration 04.07.2018	I Sept, 2018

Tax law update (2/3)

1. №489169-7

- VAT: from 18% to 20%
- Pension insurance: "as is" 22% (+10% in excess of RUB 1.021 mln.)
- Right for VAT recovery on subsidies till 1 Jan 2019 for autoproducers

2. №249505-7

- TP control for Russian inland transactions: under certain circumstances
- Property tax exemption for movable property
- VAT desk tax audit period reduction: from 3 to 2 months
- Reduction of threshold for declarative VAT refund: from RUB 7 bln. to RUB 2 bln.
- Regional tax concessions: 4.5% - transitional period until 2022

Tax law update (3/3)

3. №442400-7

- Income gained in excess of the paid considerations upon exit and/or liquidation = dividends
- Tax free return of “contribution into property” irrespective of the participation share
- 0% to sale of shares of Russian entities irrespective of the date and form of acquisition
- Penalty interest cannot exceed the actual tax underpayment
- Simplified confirmation of BO status in case of (1) individuals; (2) public companies under certain circumstances; (3) state fund

4. №325651-7

- NEW exemption from THIN CAP rules for loans aimed @ financing long-term investment projects (under certain conditions)

CURRENT TRENDS OF TRANSFER PRICING CONTROL

Maria Kostenko

Baker McKenzie

Federal Tax Service Statistics

- **General information**

- **34** TP audits, **26** TP audit decisions
- **RUB 6.5 bln.** - tax assessments + voluntary adjustments following TP audits (100% of transactions is export of raw materials)
- **RUB 126.8 bln.** - voluntary adjustments with **RUB 16.6 bln.** of additional profits tax (39% of transactions are loans granted)

- **Advance pricing agreements (APAs)**

- **109** applications for APAs since 2012 and **40** APAs are concluded (83% - commodities, 15% - services, 2% - other transactions)

- **Top-priority directions of transfer pricing control**

- Intragroup services
- License payments
- Loan financing

Top-priority directions of transfer pricing control

- **Intragroup services**
 - Benefits test (description of services and economic or commercial value of such services for business)
 - Economic justification of allocation keys
- **License payments**
 - Selection of TP method, alternative valuation techniques
 - Selection of information sources
 - “Floating” royalty rate
- **Loan financing**
 - Economic justification of different interest rates, cash-pooling
 - Reclassification of loans into equity, thin capitalization
- **Focus on bilateral APAs** (Order of Ministry of Finance №60H of 29.03.2018)

Court Practice – Current Trends

Uncontrolled transactions

- In most cases involving tax assessment based on unjustified tax benefit, regional tax authorities do not apply the TP rules and disallow the tax deduction in full

Controlled transactions (**Uralkali case, Dulisma case**)

- Critical approach to TP documentation, taking into account a possible tax dispute
- Different TP methods should lead to approximately the same results
- Benchmarking is the most vulnerable part of TP documentation
- Analysis of the circumstances that indicate the unjustified tax benefit (related parties, special forms and terms of settlements, multiple price deviations)
- The right of the court to take into account any circumstances for determining the market price without methodological restrictions set by the Tax Code

TP IN A POST-BEPS WORLD: ARE YOU READY?

Lyusine Satiyan
EY

TP in a post-BEPS world: are you ready

CbC Notification

1. Submitting one Notification in behalf of all Russian entities
2. Differences in the Notification forms: OECD vs. Russia

CbC Report

1. Issues to consider about the local filing (where the automatic exchange of information is not activated)
 - Filing upon request or before the due date?
 - Differences of the CbC report formats: OECD vs. Russia

Master file: any actions from the constituent entities in Russia?

Local file: any changes to prepared TP documentations?

TP in a post-BEPS world: are you ready

Post-BEPS trends

1. TP for PE: to identify (re-visit) potential areas which could have a PE risk in view of the Action 7 and recent controversy trends
 - Consider on-ground activities closely (beyond contractual functions & risk)
 - TP approach to be developed keeping in mind PE analysis
2. Worldwide controversy trends – what to wait?
3. No domestic TP rules in Russia?

COURT PRACTICE ON TAX MATTERS KEY DECISIONS OF 2018

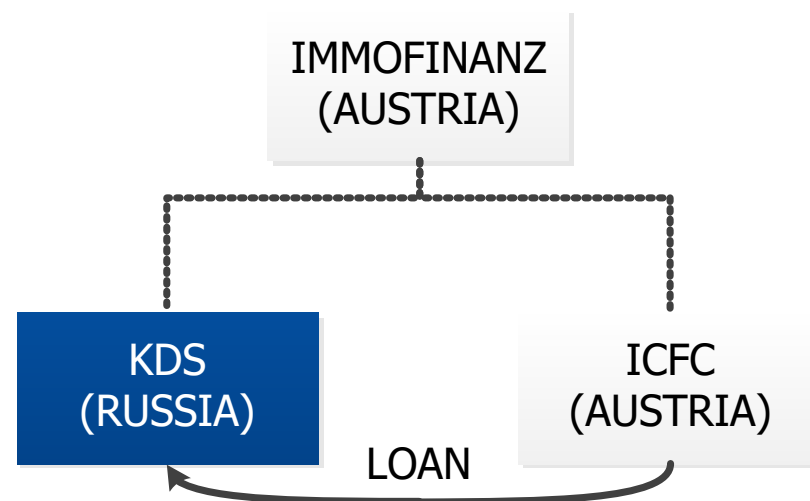
Dzhangar Dzhalchinov

Dentons

KDS case A40-176513/2016

Can DTTs apply to thin cap dividends?

- SUEK case follow-up (A27-25564/2015)
- Controlled loan = capital injection
- Application of 5% WHT rate is possible
- Matter of DTT requirements is yet to be resolved ("equity" share)



Trial

Appeal

Cassation

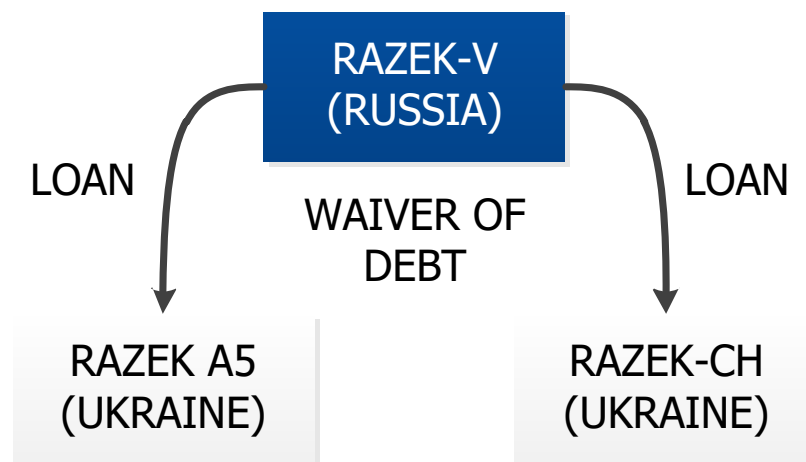
SC
Cassation

Retrial
13/08/18

Razek-Vostok case A40-151147/2017

What is “other income” for WHT purposes?

- Waived debt = other income of a foreign entity subject to WHT
- The list of WHT-exposed income is open-ended
- Other income = **any** income except for PE income and income from sale of goods, works, services



Trial

Appeal
21/06/18

Cassation
?

Other notable tax cases of 2018

1	Melnik case A03-21974/2017 (+) WHT on buy-out of shares
2	Nestle case A40-108591/2017 (–) Accounting for a loss on sale of shares in CPT base
3	Rusfinans case A40-50297/2017 (–) Accounting for a loss on liquidation of a subsidiary in CPT base
4	FK Puls case A41-17865/2016 (+) Time limit for deducting expenses of previous periods for CPT purposes
5	Bamtonnelstroy case A33-17038/2015 (+) VAT treatment of invalidated transaction
6	Pharmamed case A41-103588/17 (–) Imposition of income from sale of a trademark by a foreign affiliate
7	MAGE case A42-2441/2017 (–) Elimination of double taxation by Personal Income Tax

Vadim Zaripov

Deputy Chairperson of the AEB
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CLOSING REMARKS