



DEVELOPMENT OF THE RUSSIAN TAX SYSTEM: RESULTS OF THE FIRST HALF OF 2017 AND PERSPECTIVES



Dr. Alina Lavrentieva

Chairperson of the AEB Taxation Committee, PwC

OPENING REMARKS



Dmitry Volvach

Head of Department for Standards and International Cooperation, Federal Tax Service of Russia



SESSION 1

RUSSIA IN INTERNATIONAL COOPERATION IN TAX SPHERE: MLI DEVELOPMENTS

RECENT CLARIFICATIONS AND FEDERAL TAX SERVICE POSITION ON:

- Unjustified tax benefit concept**
- Beneficial ownership matters**

DRAFT LAW ON TAX ABUSE AND OTHER NEWS FROM THE STATE DUMA

INVESTMENT RELATED TAX EXEMPTION - NEW LEGISLATIVE INITIATIVE



RUSSIA IN INTERNATIONAL COOPERATION IN TAX SPHERE: MLI DEVELOPMENTS

Mikhail Filinov

PwC

Тест на основную цель - ТОЦ (PPT)

Получение льготы по соглашению не должно быть основной целью сделки

*«Независимо от любых положений Налогового соглашения, на которое распространяется настоящая Конвенция, **льгота** в соответствии с Налоговым соглашением, на которое распространяется настоящая Конвенция, **не предоставляется в отношении вида дохода или капитала, если, принимая во внимание все соответствующие факты и обстоятельства, возможно обоснованно заключить, что получение такой льготы было одной из основных целей** какого-либо соглашения или сделки, которые прямо или косвенно привели к этой льготе, если только не было установлено, что предоставление такой льготы в этих обстоятельствах будет соответствовать целям и задачам соответствующих положений Налогового соглашения, на которое распространяется настоящая Конвенция.»*

Упрощенное ограничение льгот - УОЛ (SLOB)

Установленный перечень лиц, признаваемых «квалифицированными» для применения льгот по соглашению

Воспользоваться льготами по ДИДН могут:

- 1. Физическое лицо*
- 2. Государство (или политическое подразделение, орган власти...)*
- 3. Компания, основной класс акций которой торгуется на признанной бирже*
- 4. Согласованная некоммерческая организация*
- 5. Лицо, действующее в целях предоставления пенсионных пособий*
- 6. Лицо, принадлежащее 1)-5) в течение 183 из 365 дней*
- 7. Лицом владеют эквивалентные бенефициары*

Применение льгот возможно «активным бизнесом» (в случае, если доход с ним связан)

К активному бизнесу не относятся:

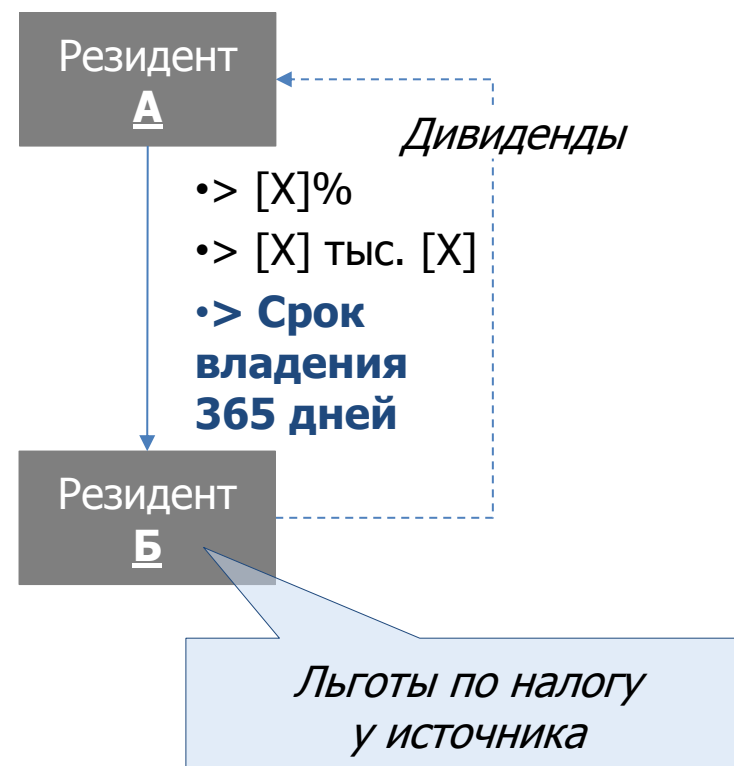
- Холдинг*
- Корпоративный административный центр*
- Финансовый центр группы (включая кэш-пулинг)*
- Инвестиционный бизнес (за исключением профессиональных участников рынка)*

Дивиденды

- Правило не отменит действующие ограничения (доля участия / сумма инвестиций и т.д.)
- Вводится новое ограничение – выполнение условий владения по ДИДН в течение установленного срока - 365 дней, предшествующих дате выплаты



При расчете **не учитываются** изменения в структуре собственности, прямо связанные с реорганизацией организации, выплачивающей или получающей дивиденды

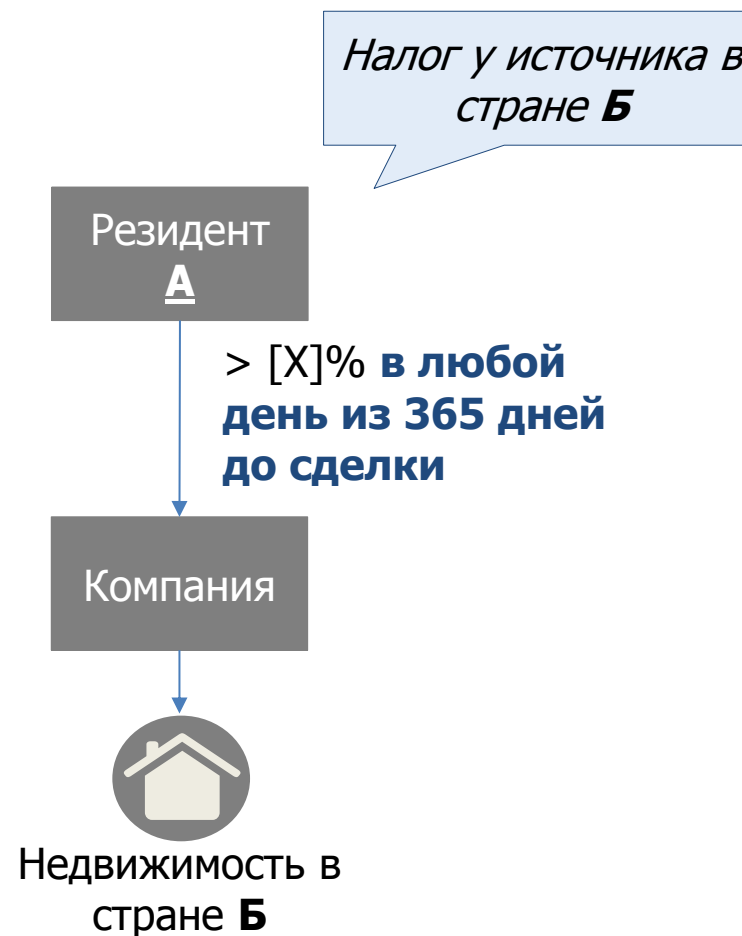


«Выход» из *property-rich* компаний

- Налогообложение по месту нахождения недвижимости – распространение на все ДИДН
- «Тест» на долю недвижимости в активах продаваемой компании необходимо делать в любой из 365 дней, предшествующих сделке



Распространение правил «косвенной реализации» на продажу долей в партнерствах, трастах и иных видах участия, аналогичных акциям





Положения Конвенции о постоянных представительствах

- Деятельность через агента – «зависимый агент»
- «Подготовительная и вспомогательная» деятельность, не приводящая к образованию ПП
- ПП на стройплощадке – положение о разделении контрактов
- Постоянные представительства в третьих юрисдикциях

Изменения по MAP



Рекомендации ОЭСР по MAP (Действие 14 Плана BEPS)

Многосторонний инструмент - возможность поменять все не соответствующие «минимальному стандарту» положения единовременно

В настоящий момент

В Минфин России могут обращаться налоговые резиденты Российской Федерации или граждане Российской Федерации



Нет решенных MAP по вопросам ТЦО в России



Время осуществления корректировок по вопросам налогообложения ограничивается национальными нормами



Нет лимита по длительности MAP



Отсутствие арбитража в российских ДИДН.
Условие о возможности включения положений, если такие нормы будут включены в соглашение с третьей страной (Нидерланды, Швейцария)



Предстоящие изменения

Налогоплательщик может обращаться в любой компетентный орган (не только по принципу налогового резидентства)

Возможность применения взаимосогласительной процедуры к вопросам трансфертного ценообразования

Бессрочный характер реализации решения по процедуре или информирование партнера о приемлемых сроках

Установление временного лимита в отношении срока взаимосогласительной



BENEFICIAL OWNERSHIP: GUIDANCE FROM FEDERAL TAX SERVICE

Victor Kalgin
EY

Round table on beneficial ownership



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ФНС России совместно с международным юридическим сообществом обсудила практику применения концепции фактического права на доход

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Организованный Федеральной налоговой службой круглый стол на тему «Развитие концепции фактического права на доход. Международная практика и подходы ФНС России» состоялся в рамках ежегодного Петербургского Международного Юридического Форума. Модератором круглого стола выступил заместитель руководителя ФНС России [Сергей Аракелов](#).

Letter of Federal Tax Service

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(ФНС России)

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Неглинная, 23, Москва, 127381

Телефон: 913-00-09; Телефакс: 913-00-05;

www.nalog.ru

17.05.2017 № СА-4-7/9270@

На №

О практике рассмотрения споров по вопросу неправомерного применения налоговыми агентами льготных условий налогообложения при взимании налога на прибыль с доходов иностранных организаций

Управления ФНС России
по субъектам Российской Федерации

Межрегиональные ИФНС России по
крупнейшим налогоплательщикам

Межрегиональные инспекции ФНС
России по федеральным округам

Управление контроля налоговых
органов ФНС России

Guidance

- Broad interpretation of the rules:
 - All types of income (not only dividends, interest and royalties)
 - Multiple purpose anti-avoidance concept
- The income recipient is not its beneficial owner => domestic withholding tax rates apply
- Court cases examples

What is next?

- Gap between the FTS' position and court practice
- No exhaustive list of criteria
- No distinction between
 - intra-group and external transactions
 - different situations (e.g. joint ventures, financial transactions)



- We can expect more disputes



THE POSITION OF THE FEDERAL TAX SERVICE REGARDING AN UNJUSTIFIED TAX ADVANTAGE

Natalia Fayzrakhmanova
Pepeliaev Group

Current situation: extremes are always bad

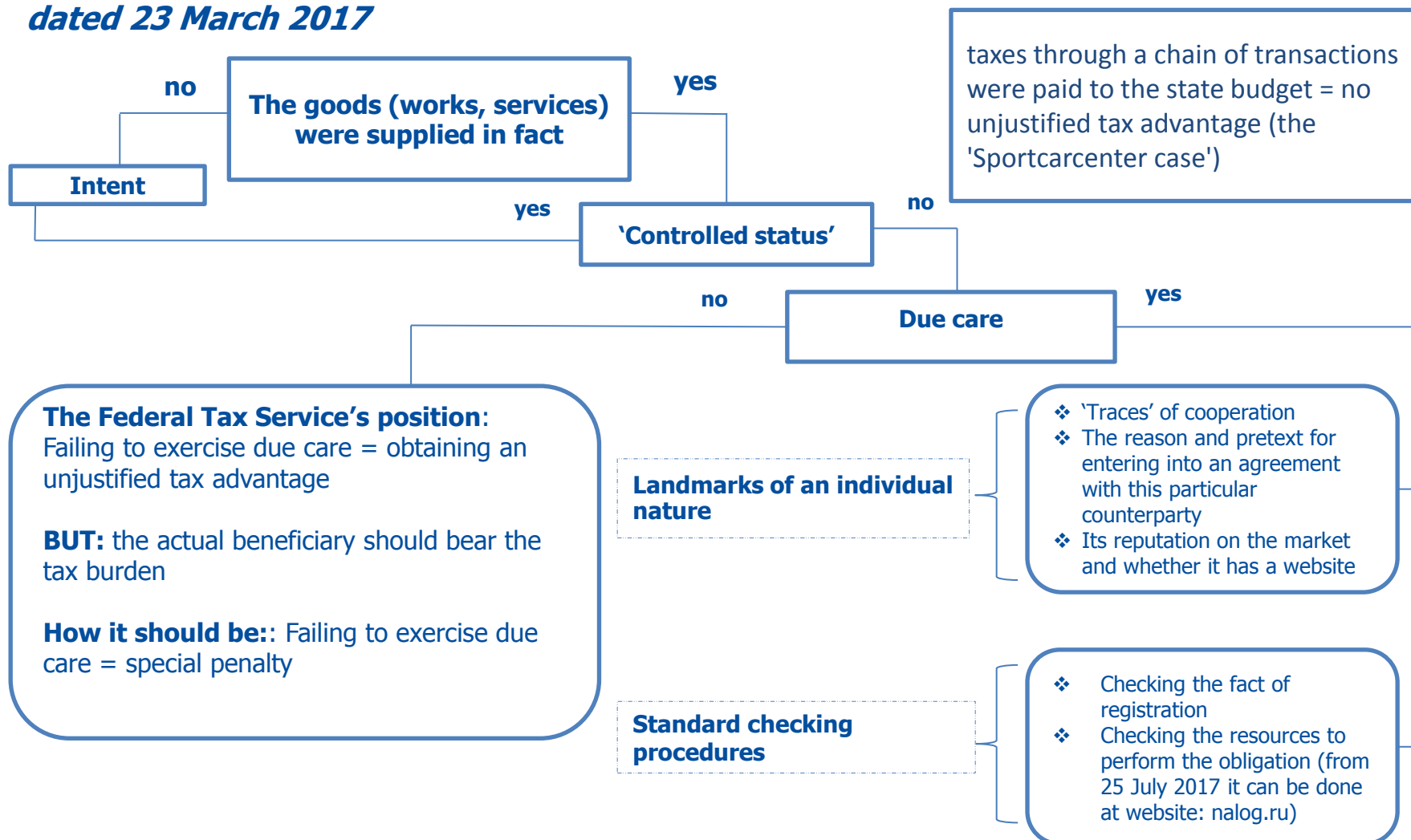


*The scapegoat bearing the
sins of all the people



*It's none of my business

The compromise - Letter No. ED-5-9/547@ of the Russian Federal Tax Service dated 23 March 2017



What to do and what to think of ...

Inside the Company

- Improve procedures
- Motivate business units

Work with counterparties

- Recovering losses
- Representations and warranties



NEW RUSSIAN LEGISLATIVE INITIATIVES

Mikhail Orlov
KPMG



New Russian Legislative Initiatives

"We should focus our tax system on the following goal – to work towards the key objective of stimulating business activity, boosting the economy and investment, and creating competitive conditions in which our enterprises can develop successfully."

President Vladimir Putin's Presidential Address to the Federal Assembly, dated 1 December 2016

New Russian Legislative Initiatives – Taxpayer Rights

529775-6 On amendments to Parts One and Two of the Russian Tax Code

Re: Establishing limits for taxpayers in exercising their rights and performing their obligations

The following amendments are ready for a second reading in the Duma:

A taxpayer shall not be allowed to reduce the amount of tax due in the following cases:

- misrepresentation of the taxpayer's economic activities;
- the primary purpose of a transaction (or operation) was not to pay a tax (or not to pay a tax fully) and/or to attempt to obtain a tax credit (refund of tax);
- the obligation under the transaction (operation) was performed by a person who was a party to an agreement with the taxpayer and/or by a person to whom the obligation to consummate the transaction (operation) was transferred by contract (or by operation of law).

The following facts shall not be treated as an independent basis for treating as unlawful a taxpayer's reduction of the tax due:

- inaccurate documents;
- failure of counterparties to pay their taxes;
- the possibility that a transaction could have been structured differently.

New Legislative Initiatives – Audit Documents

96436-7 On amendments to Articles 82 and 93-1 of the Russian Tax Code

Key Points of the Draft Law:

An authorized government tax official may require audit firms or individual auditors to provide documents (information) received by them in the course of performing the audit which served as the basis for calculating and paying (withholding, transferring) of a tax (fee) by the taxpayer (in its capacity as the payer of collected taxes, as the payer of insurance contributions, as a tax agent).

These documents can be demanded by a tax authority if a taxpayer fails to submit these documents (information) to such authority:

- pursuant to a resolution of the head (deputy head) of any superior tax authority or of the head (deputy head) of any federal agency in charge of exercising control and supervision over taxes and levies in the course of conducting a tax audit;
- as requested by any competent authority of a foreign country in the situations provided for in an international treaty to which the Russian Federation is a party.



New Legislative Initiatives – VAT, Contributions to Assets, Zero VAT Rate

204712-7 On amendments to Article 88 and Chapter 21 of the Russian Tax Code

Re: Refund of VAT paid by foreign nationals related to goods acquired in the Russian Federation and later exported.

128489-7 On amendments to Articles 251 and 271 of the Russian Tax Code

Re: Clarification of the types of income not subject to corporate profits tax.

Key Points of the Draft Law:

The monetary value of property, property rights or non-property rights received as a contribution to the assets of a business association or partnership shall not be subject to corporate profits tax.

113663-7 On amendments to Articles 164 and 165 of the Russian Tax Code

Re: Improvements to the application of the zero percent VAT rate.

Key Points of the Draft Law:

Taxpayers shall have the right (but not the obligation) to apply the zero percent VAT rate to exports and to the provision of transportation services.



SESSION 2

SUPREME COURT OVERVIEW ON TRANSFER PRICING MATTERS

VAT PAYABLE BY SEPARATE SUBDIVISIONS OF FOREIGN LEGAL ENTITIES – NEW DEVELOPMENT

TAXATION OF E-COMMERCE: VAT REGIME ON ESS AND ONLINE TRADE OF GOODS

COURT PRACTICE OVERVIEW – IMPORTANT CASES

JULY 25 – A DAY OF TAX TRANSPARENCY IN RUSSIA

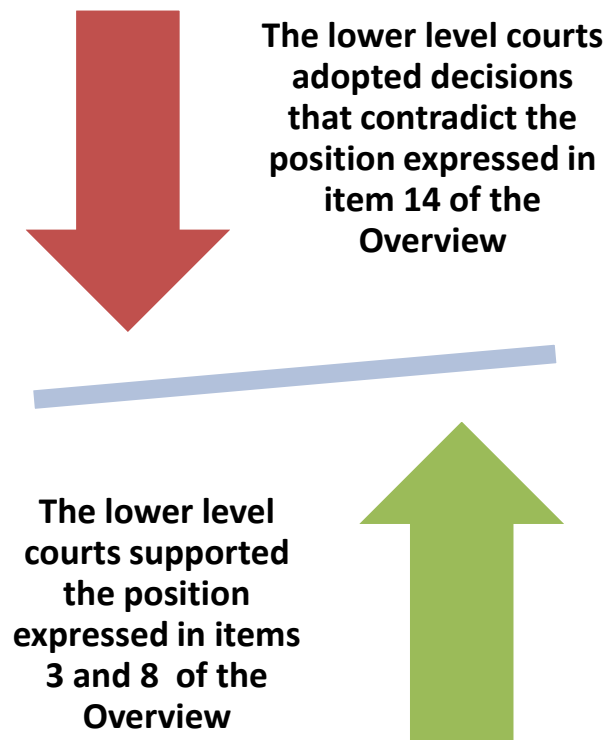


THE SUPREME COURT OVERVIEW AS AN ILLUSION OF TAXPAYER'S POSITION STABILITY

**(Based on the court practice overview issued by the Supreme
Court Presidium on 16 February 2017)**

Maria Semenova
Mazars

The Supreme Court position: expectations and reality



Item 3 of the Overview

The tax authorities should not challenge the price established by a taxpayer in cases that are not envisaged by Section 6 of the RF Tax Code. The deviation of the applied price from the market level does not itself evidence that the taxpayer received unjustified tax benefit (*OOO "Zavod Technoflex" case, Decision of the Arbitration Court of the North-Caucasus District dated 10 May 2017 N F08-1948/2017*).

Item 6 of the Overview

Although the court could take into account any circumstances that affect the market price, it is not allowed to deviate from the established transfer pricing rules.

Item 8 of the Overview

In deciding on engagement of an expert, the court should consider whether it is needed to compensate for the insufficient quality of the tax audit or it is needed to resolve doubts in credibility or overcome ambiguity of the presented evidence.

IMPORTANT: the Supreme Court ruling is not a part of Russian legislation on taxes and levies. Recent practice shows that the lower level courts could ignore the Supreme Court position.

When and how independent appraiser could help



Applicability

The appraisal report only counts for cases outlined in Section 6 of the RF Tax Code (item 7 of the Overview).

Content of the report

The report should enable to make a conclusion on the level of income/profit under the controlled transactions. The **market price** concept applied for valuation purposes is of probable character and, therefore, it does not always take into account the possibility to execute a transaction under the corresponding terms (item 7 of the Overview).

Professional requirements

The expert opinion could be disregarded, if the appraiser does not meet requirements established by articles 4 and 9 of the Law on Valuation Activities, e.g. it has no self-regulated association membership, no professional insurance policy, etc. (item 8 of the Overview, *PAO "Kazan'orgsitnez" case, Decision of the 9th Appeal Arbitration Court of 29 March 2017 N 09AP-7996/2017*).

IMPORTANT: an independent appraisal could be taken into account only in cases established by the legislation and it should not be the only evidence in the court



5 practical tips for taxpayers

1. Pay attention to the content and quality of transfer pricing documentation; view it as a instrument to protect against creative interpretations and fines.
2. Elaborate transfer pricing defense strategy for “Russia-to-Russia” transactions with related parties, monitor the prices, even if they are blow the controlled transaction threshold.
3. Focus on grabbing essential details that allow to identify a particular controlled transaction in notifications on controlled transactions.
4. Consider independent appraisal where required by non-tax laws and for one-off transactions with related parties, ***BUT***
5. Do not treat the valuation report as an indulgence, pay attention to the report content and professional level of the appraiser.



VAT PAYABLE BY SEPARATE SUBDIVISION OF FOREIGN LEGAL ENTITIES – NEW DEVELOPMENTS

Tatiana Kirgetova
Gide Loyrette Nouel

VAT PAYABLE BY SEPARATE SUBDIVISIONS OF FOREIGN LEGAL ENTITIES – NEW DEVELOPMENT

- **Practice:** Based on provisions of VAT chapter of the Tax Code of the RF (“**TC RF**”) *as a whole* and clarifications of the Ministry of Finance of the RF (*in particular, see letter No. 03-07-08/57178 dated 12.11.14*):

IF a foreign legal entity (the “**FLE**”) is tax registered in Russia in respect of activity through a separate subdivision in Russia, but *such subdivision is not involved in conclusion and fulfillment of an agreement (part of the agreement)* signed by the FLE,

a **PURCHASER** (a Russian legal entity or a Russian separate subdivision of a foreign legal entity) should calculate, withhold and transfer to the Russian budget VAT, as a tax agent, in respect of VATable transactions under such agreement (part of the agreement).

- **Decision (Определение) of the Constitution Court of the RF No.2518-O dated 24.11.16** (the “**Decision**”).

VAT PAYABLE BY SEPARATE SUBDIVISIONS OF FOREIGN LEGAL ENTITIES – NEW DEVELOPMENT

- The following issues should be taken into account related to the Decision, in particular:
 - ✓ whether the Decision in the part in question has an obligatory force?
 - ✓ provisions of the VAT chapter of the TC RF should be considered as a whole, i.e. provisions of this chapter of the TC RF should be applicable taking into account all other related provisions of the chapter, in particular, provisions of Article 174.7 of the TC RF;
 - ✓ there is a risk that application of the Definition in the part in question could lead to: (i) double taxation (i.e. withholding of VAT by a tax agent and payment of VAT by a separate subdivision of a foreign legal entity) and/or (ii) certain profit tax risks.



VAT PAYABLE BY SEPARATE SUBDIVISIONS OF FOREIGN LEGAL ENTITIES – NEW DEVELOPMENT

The following steps should be taken:

- application to Ministry of Finance of the RF in respect of this issue (Tax Committee of AEB submitted a letter to the Ministry of Finance of the RF on 14.06.2017);
- amendments to certain Articles of the VAT chapter of the TC RF are required, in particular: Article 161.1, 166.3, 174.4.



TAXATION OF E-COMMERCE

Arseny Seidov
Baker McKenzie

VAT REGIME ON ESS – KEY DEVELOPMENTS



Association
of European
Businesses

1) Some statistics

- over **30** guidance letters and expert opinions
- **over 116** registered foreign suppliers of e-services
- over **RUB 2 bln** of VAT paid in Q1 2017
- **92** VAT returns on ESS filed in Q1 2017

2) Trends and controversial aspects

- The FTS considers the possibility to treat Russian **banks and carriers as tax agents** of foreign e-suppliers
- Software license **VAT exemption is effective** within the Internet (*inter alia* applies to (sub-)license agreements irrespective of who actually supplies software)
- Russian branches/representative offices of foreign e-suppliers may **pay VAT from their bank accounts** if INN and KPP are indicated correctly
- **Supporting documentation** and use of **e-signatures**

VAT REGIME ON CROSS-BORDER SALE OF GOODS

1) Draft law - timeline

- Foreign companies selling goods online to Russian consumers may become subject to Russian VAT **in 2018-2019**
- The Draft Law may be introduced to the State Duma **by the end of July 2017**

2) Key features

- Tax agents are (a) foreign and Russian **operators of online marketplaces**, or, in their absence, (b) foreign intermediaries
- New responsibilities: operators of online marketplaces on request of tax inspectorate may be required to **block access** of foreign company selling goods **to the marketplace** or **pay 100% of VAT**
- New type of liability: Roskomnadzor may **block access to the website** of marketplace or taxpayer upon tax inspectorate's request
- Russian consumer may apply for **VAT refund** if he/she pays customs duties on acquired goods (correlation with customs / EAEU rules)

OTHER E-COMMERCE DEVELOPMENTS



1) Use of e-cash registers

- From **July 1, 2017** companies and individual entrepreneurs receiving/paying funds **in cash** and/or **through e-payment instruments** for goods (works, services) sold/provided are required to use new e-registers
- **Ease in tax control:** data on each transaction executed through e-registers is automatically **transferred to** servers of **the Russian tax authorities**
- Whether applicable to **non-residents** e-suppliers?
- E-registers **are not used** in payment settlements between online retailer and courier companies or other intermediaries
- Courier services companies or intermediaries **collecting payments for online retailer** from Russian consumers are responsible for use of e-registers

2) Taxation of cryptocurrencies

- Russian Central Bank to produce **draft law on taxation of cryptocurrencies** in July-August 2017
- Proposed legal **status of cryptocurrencies** for tax purposes:
 - *"other type of property"* (Russian Ministry of Finance)
 - *"digital goods"* (Russian Central Bank)



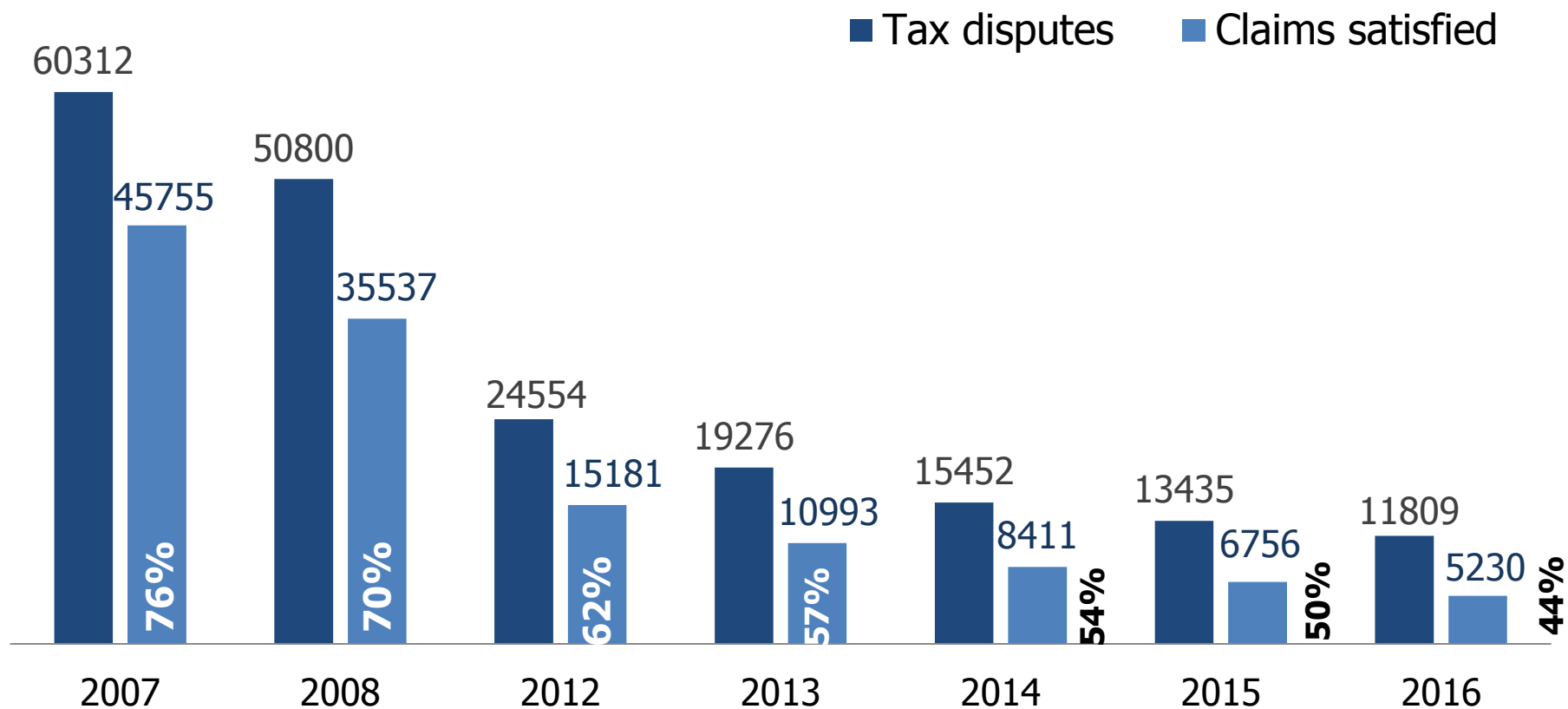
COURT PRACTICE OVERVIEW: IMPORTANT CASES

Sergey Likhachev
Goltsblat BLP

Key trends

- Fewer litigations
- Tax authority wins more frequent
- Disputes more sophisticated
- Remote attitude of the Russian Supreme Court

Tax dispute statistics



Old structures cease to work

- Judgements re beneficial owners (*Severstal* and *MDM Bank* cases)
- Debt push down attacked (*Radius-Service* case)
- Further developments on transactions with listed securities (*VTB24* case)
- Tax debts collected from new business owners (*Interos* case) and actual heads/owners (*Ivkin* and *Zagursky* cases)



Novel legal positions by the Supreme Court

- Bad faith suppliers (*Centrregionugol* and *Energokomplekt* cases)
- Payments to employees upon dismissal (*Murmansk Trawler Fleet*, *Parliament Production* and *MCC EuroChem* cases)
- Transfer pricing (*Stavgasoborudovanie*, *Akvapark* and *Minaevsky BC* cases)



Vadim Zaripov

Deputy Chairperson of the AEB Taxation Committee, Pepeliaev Group

CLOSING REMARKS



Q&A