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“Development of Tax Legislation and Enforcement Practices – First Half of 2012”

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June 28, 2012

Baltschug Kempinski Hotel

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Chaired by **Dr. Alina Lavrentieva,**
AEB Taxation Committee
Chairperson

June 28, 2012

Key Tax Policy trends over 2013-2015

Sergey D. Shatalov
Deputy Minister of Finance

June 28, 2012

Transfer Pricing developments

Svetlana Stroykova

PwC

Evgenia Veter

Ernst & Young

June 28, 2012

***Hot VAT issues:
electronic VAT invoices***

Vassily Zudin
Taxcom

June 28, 2012



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New scope of e-documents turnover

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Electronic documents turnover B2B

How does the system works?

In the system of reporting via Internet are operated the following:

- Subscriber (the user of the system-the subscribers can use different EDT- operators)
- EDT- operator



Every participant has its own certified software package.

Electronic documents turnover operator

The EDT-operators institution was created according to the legislation.

The professional activity of EDT-operators is controlled by the Federal Ministry of Telecommunications, Informational technologies and mass communication (Roskomnadzor) and Federal Bureau of Security (FSB) of Russian Federation.

The EDT-operator provides the possibility and implementation of the Regulations for the following types of electronic documents turnover:

- Reports submission to the main controlling and statistics state authorities
- Electronic documents turnover between taxpayers and tax authorities development applicable to representation of reclaimed documents (The “E-VAT-invoices” project)

Legislation

Thereby e-documents turnover fully complies with existing legislation:

- E-documents exchange between economic entities is provided by the legislation
- Invoices can be transmitted in the electronic form
- An EDT operator presence is obligatory
- The procedure of e-documents reclamation by a tax authority is approved by FTS
- E-VAT-invoice, purchase ledger, sales ledger formats and book-keeping rules approved and entered into force on 23.05.2012

E-VAT-invoices exchange mechanism

The EDT operator **guarantees and provides documentary evidence** of e-documents delivery including the date and the time of the documents sending;

E-documents delivery and reception principles are similar to electronic financial statements reporting principles: every e-VAT-invoice **must be signed by EDS using certified cryptographic tools** of information security.

VAT on bonuses

Evgeny Timofeev
Goltsblat BLP

June 28, 2012

Dirol Cadbury / Leroy Merlin

- **Bonus is a retroactive discount affecting price:**
 - Bonuses are not subject to VAT
 - But the VAT credits of the purchaser have to be reinstated
- **Defense against attacks on the past:**
 - Does “VAT invoice available” argument apply?
 - Or not?

New Problem

- **Parliament's intention:**
 - “Extremely simple mechanism that is very convenient for the taxpayers”
- **Government's action (Decree #1137):**
 - One corrective VAT invoice per each original VAT invoice
 - No “one-line” cumulative corrections within one corrective VAT invoice
 - Correcting prices per item – despite changing only the cumulative price

What Can Be Done?

- **There may be a way to interpret #1137 as allowing all this:**
 - Reference to original VAT invoice in the title in singular does not necessarily mean only one VAT invoice can be mentioned
 - Using “if possible to indicate” reservation (as regards units, their quantity, price per unit)
 - But would you sleep well utilizing credits based on this?
- **Surgical solution:**
 - We intend to sue the Government seeking to invalidate #1137 insofar it makes “one VAT invoice / one line” approach impossible
 - We need big companies where this problem is huge and obvious
 - Join the club!

***International Taxation matters
Thin Capitalization: recent practice
development after Severny Kuzbass case***

Alexander Anichkin
Clifford Chance

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Is there life after the *„Northern Kuzbass“?*

Alexander Anichkin

Partner, Clifford Chance

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Is there life after the “*Northern Kuzbass*”?

- What were the main conclusions of the VAS in the “*Northern Kuzbass*”?
 - Non-discrimination clauses of DTTs make Russian thin cap rules ineffective
 - Article 9 of the DTTs on associated enterprises allows application of thin cap rules
 - Russian thin cap rules don't breach non-discrimination clauses of Russian/Swiss and Russian/Cypriot DTTs

Is there life after the “*Northern Kuzbass*”?

Court Practice after the “Northern Kuzbass”

Positive	Negative
Boksit Timana (24/04/12)	Terminal Sibir (15/05/2012)
OZP (02/03/2012)	Promleasing (05/04/2012)
Continental Tyres RUS (07/02/12)	Snezhnoe (DalLesProm) (19/03/12)
Wintershall Holding GmbH (15/12/11)	BMZ (13/01/2012)
Federal Mogul Power Train Vostok (01/12/11)	Omega-Premium (16/03/12)

Is there life after the “*Northern Kuzbass*”?

- Time to draw some conclusions:
 - The court practice is controversial, and even positive judgments may be poorly reasoned
 - The non-discrimination defence is not completely discarded
 - More focus on maintaining the arrangements at arm's length

Draft Law on taxation of transactions with offshore companies

Arseny Seidov
Baker & McKenzie

June 28, 2012

Draft Law on Taxation of Transactions with “Offshore Companies”

- Draft law prepared by the Federal Tax Service
- Intent to combat abuse of tax treaties and encourage information disclosure on beneficial owners
- New concepts of “beneficial owners” and “offshore zones”
- New expense deductibility and information disclosure rules
- Applicable to both individuals and legal entities

Proposed Approach

- Payments made to “offshore entities” (residents of the MinFin listed countries):
 - not tax deductible, AND
 - subject to 20% corporate profits tax and individual income tax at the level of the Russian taxpayer,
unless the beneficial owner is disclosed, is not the Russian taxpayer, pursues genuine business purpose, etc.
- If a Russian taxpayer is the beneficiary, the additional Russian corporate profits tax due is levied at a rate of 9% (deemed dividend)
- Special rule for offshore entities paying at least 50% of Russian tax equivalent

Perspectives of the Law

- Issues around definition and interpretation of “beneficial owner” under draft law and proposed amendments to the Russia tax treaty model
- Questionable correlation with controlled foreign corporation rules
- Draft law not yet submitted to the State Duma and feedback from other government authorities expected
- Unclear perspectives of the proposed draft law in the current version, but more to be seen

New trends in taxation of Eurobonds

Maxim Vladimirov
Noerr

June 28, 2012



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News on the Taxation of Eurobonds

Maxim Vladimirov

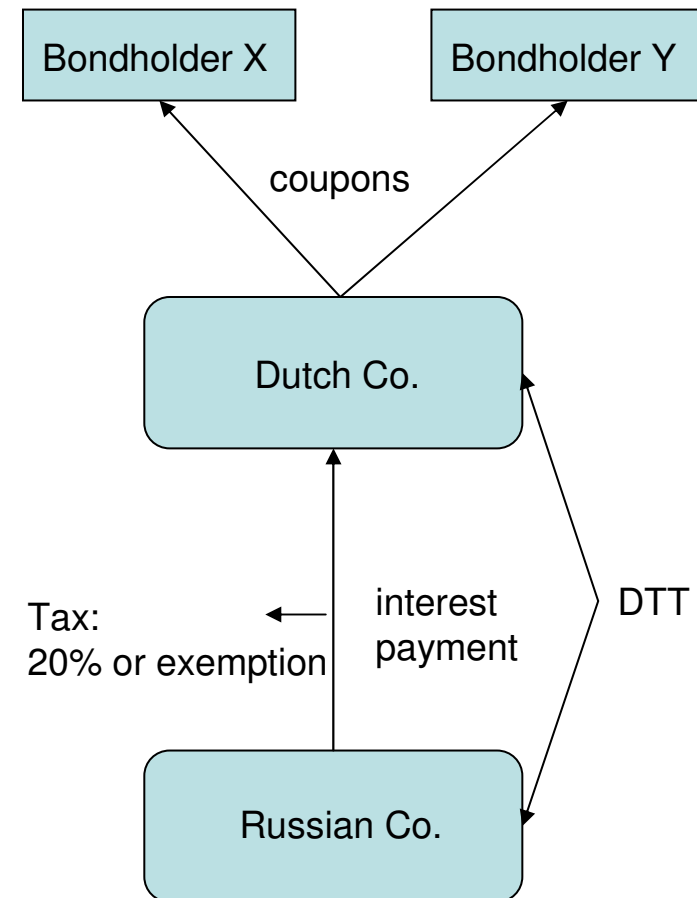
Partner, Head of Tax and Financial Advisory
Noerr OOO

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Taxation of Eurobond Structure

- DTT:
 - “beneficial owner” is tax exempt if resident in a DTT country
- Old practice:
 - SPV is treated as beneficial owner
- Letter of the Ministry of Finance no. 03-08-13/1 dated 20 February 2012 :
 - bondholders are beneficial owners
 - Russ. Co. should withhold 20% if no confirmation of residency



Draft Law

Proposed by MinFin on 20 February 2012

- Exemption for Eurobonds issued before 1 January 2013
- Exemption for Eurobonds issued from 1 January 2013
 - Russ. Co. will not withhold if interest is received by first level bondholders resident in a DTT country
- Requirements
 - bonds are listed on an approved foreign exchange
 - bonds are cleared through an approved clearing system

Federal Law

- adopted by the State Duma on 6 June 2012
- pending approval by the Federation Council and signature by President
- exemption for Eurobonds issued before 1 January 2014 **only**
- post 2014: a new discussion ?

***Ratification of Protocol to Russia –Cyprus Double Tax
Treaty – what is important***

Evgeny Smirnov
Herbert Smith

June 28, 2012



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Ratification of Protocol to Russia-Cyprus Double Tax Treaty – what is important

Evgeny Smirnov, Herbert Smith

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Protocol to the Russia-Cyprus DTT

- Signed in October 2010
- Ratified by Russia in February 2012
- In force from April 2012
- Applies from 2013 (except for certain provisions)

Reasons for signing the Protocol

- Cyprus:
 - Unlike its major competitors (e.g., the Netherlands, Luxembourg), Cyprus is blacklisted by the Russian Ministry of Finance
 - When the unofficial draft of the Protocol became publicly available in April 2009, the expected outcome according to numerous media reports was the removal of Cyprus from the “blacklist”
- Russia:
 - As the use of Cyprus for holding structures became abusive (often without valid business considerations and predominantly for tax purposes), Russia decided to amend its DTT with Cyprus

Major developments and other changes

- Real estate companies
- Anti-avoidance:
 - limitation on benefits
 - exchange of information
 - assistance in the collection of taxes
- Dividends and interest
- Other changes

***Conducting Mutual Agreement Procedures by the RF
Ministry of Finance : opportunities for taxpayers***

Vladimir Voinov
Pepeliaev Group

June 28, 2012

MAP in Tax Treaties

OECD Model (Article 25):

- taxpayer's right to apply to a competent authority;
- resolving by mutual agreement of any difficulties or doubts arising as to the interpretation or application of a Treaty;
- possibility of arbitration

Application for MAP in Russia

Information from Russian MF (21/03/2012)

- competent authority for MAP in Russia;
- purposes of MAP;
- form of request for MAP's initiation;
- time limits;
- appropriate documentation

Example of MAP's result

Supplier's bonuses under Russia –
Belorussia Tax Treaty

- initial position: such bonuses are “Other income” and may be taxed in Russia;
- position after Russia-Belorussia MAP: bonuses shall be treated in accordance with Article “Business profits”

Court Practice developments

Dzhangar Dzhchalchinov *Salans*

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Developments in Tax Court Practice

Dzhangar Dzhchalchinov, Head of Tax Practice, Salans

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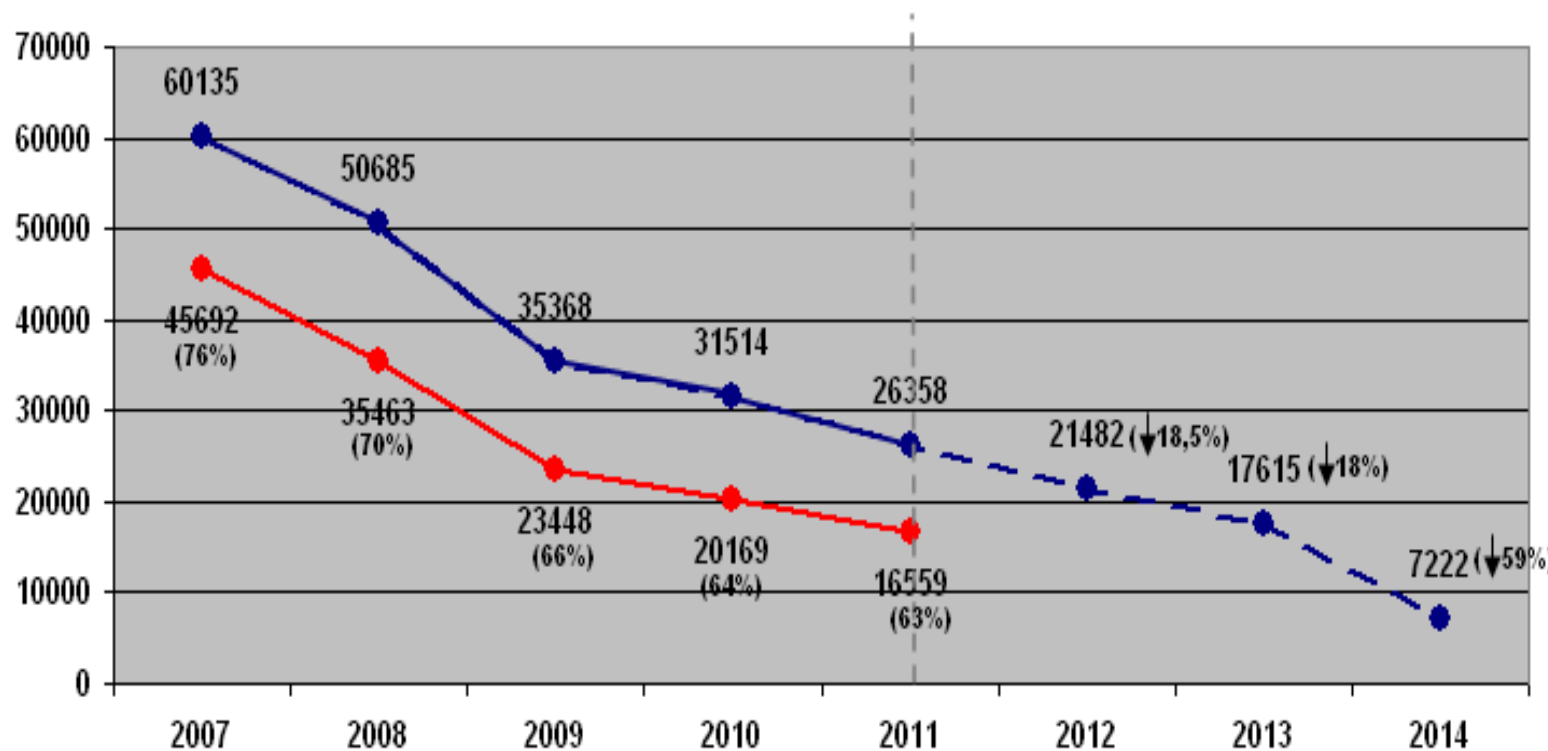
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Tax disputes - trends

- Fewer disputes
 - Pre-trial filtering
- Increasing share of field tax audits
 - Pre-audit nightmare
- Increase in disputes re interpretation of non-tax issues
- In favor of taxpayers – no change

Tax disputes - outlook



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Tax dispute - procedure

- Mandatory pre-trial appeal
 - For all acts, actions/omissions
- Games with justice
 - Choice of court and judge
 - Injunctions
- Recapturing property
 - Tax refunds
 - Recovery of interest
 - Legal costs
 - Losses



Tax disputes – main topics

- Unjustified tax benefit
 - Fictitious vs. calculation method
- Justification for expenses
- “Gratuitous” transactions
- Tax refunds
- Thin Cap issues



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