



The Association of European Businesses

Development of the Russian Tax System in 2013 and Prospects for 2014 – 2016

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July 3, 2013

Ararat Park Hyatt

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Chaired by

Dr. Alina Lavrentieva

PwC partner

*Chairperson of the AEB Taxation
Committee*

Opening remarks

Dr. Frank Schauff
Chief Executive Officer
Association of European
Businesses

Main developments of the taxation policy in 2014-2016

Key-note speech by

Sergey D. Shatalov

***Deputy Minister of Finance of the
RF***

Transfer pricing – what is new?

Documentation on controllable transactions

Aggregation of transactions for TP documentation

Recent clarifications of the fiscal authorities on TP matters

Experts:

A. Kizimov

Ministry of Finances of the RF

S. Stroykova

PwC

D. Kulakov

Deloitte

Brief overview of the key clarifications on the TP rules

Svetlana Stroykova, PwC

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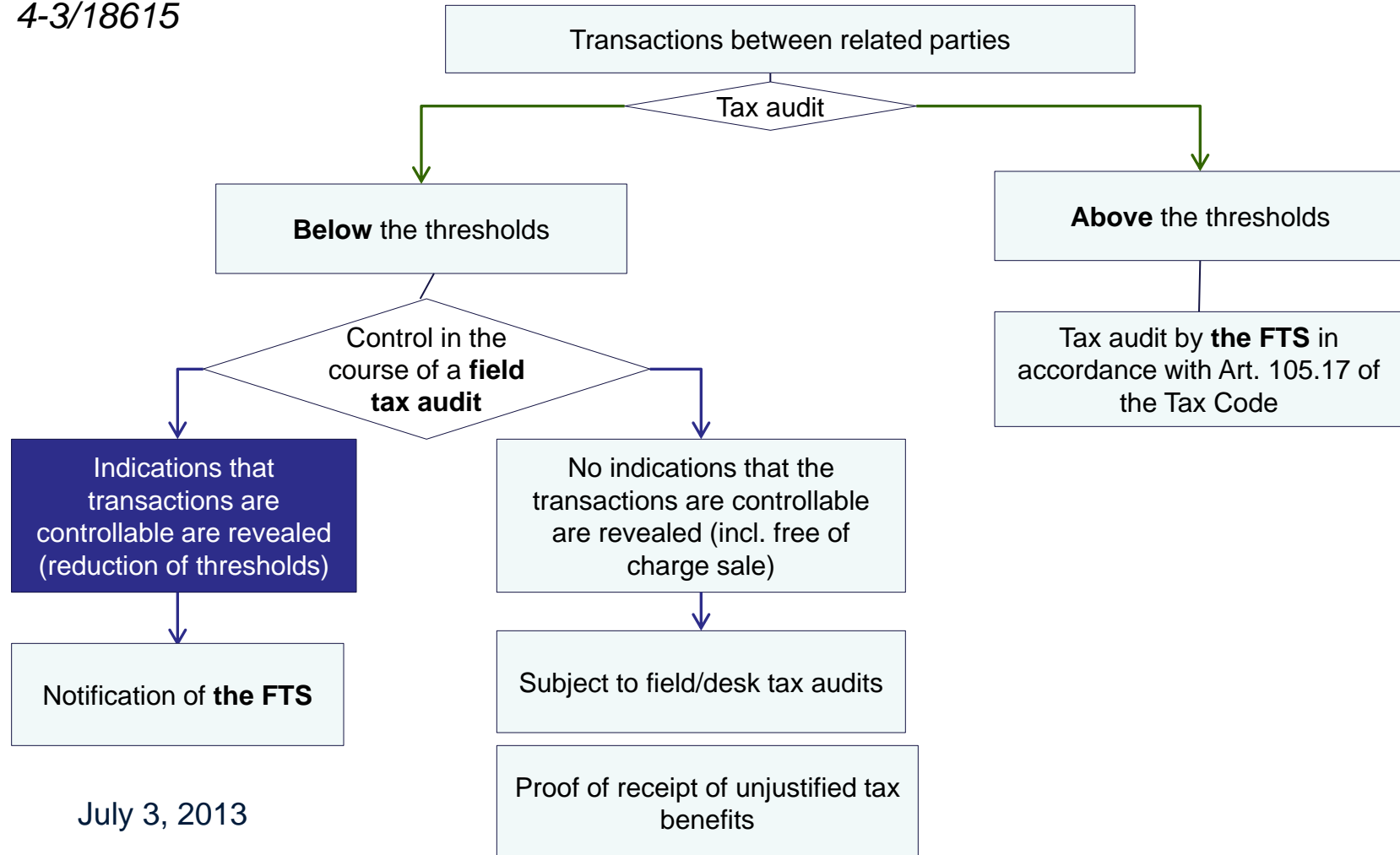
Exchange differences

MinFin Letter of 26 March 2012 No 03-01-18/2-38

Income, provided for in [p. 2 Art. 250](#) of the Tax Code, when determining income for the purposes of [Art. 105.14](#) of the Tax Code for a calendar year, is determined taking into account the provisions of [Art. 290](#) of the Tax Code, i.e. **taking into account exchange differences.**

Pricing audit of controlled transactions

FTS Letter No 03-01-18/8-145 of 18 Oct 2012 a., MinFin Letter / FTS of 2 Nov 2012 a. No ED-4-3/18615



July 3, 2013

Transaction date

MinFin Letter of 5 March 2013, No 03-01-18/6502

For the purposes of Section V.1 of the Tax Code **the date of transaction performed accordance with an agreement concluded in a written form**, could be considered as the date of performance of operations in execution of the said transaction aimed at establishment, adjustment or termination of civil rights and obligations

Two options:

- 1) the price is fixed when the agreement is concluded, then info available at the date of the conclusion of the agreement could be used;
- 2) pricing methodology is determined, formula or any other procedure of price calculation, then information available **at the date of such changes** should be used, including pricing info of taxpayer's deals with unrelated parties, or **accounting data for 3 years preceding** the calendar year in which changes to the agreement are introduced.

Grouping transactions

MinFin Letter of 22 March 2013 N 03-01-18/9012

Tax Code does not establish any special provisions regarding the term **“a group of similar transactions”**.

When grouping transactions in a “group of similar transactions” for TP purposes it is important that the transactions have the following similar attributes:

1. similar functions performed by a taxpayer
2. similar pricing method applied
3. similar profit level indicator
4. actual profitability of comparable entities

VAT and bonuses – end of chapter?

Amendments to the RF Tax code

Court practice as a basis for past period risks evaluation

Experts:

M. Orlov

KPMG

E. Timofeev

Goltsblat B.L.P.



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VAT on Bonuses: All Problems Solved?

Mikhail Orlov, KPMG

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1) Right to choose between “premium” and “discount”

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2) Combined adjusting VAT-invoice

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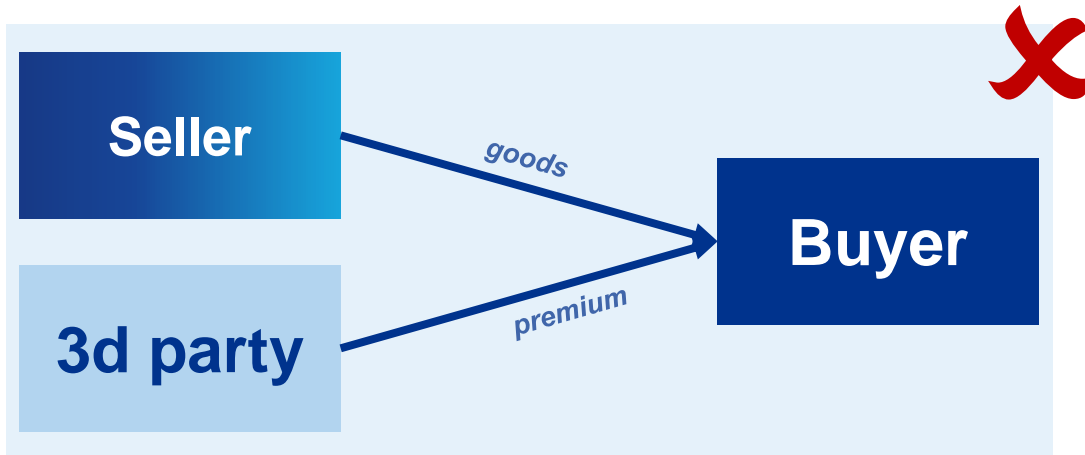
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3) Adjustment should be made in the period of price correction

Item 10 of Article 154 of the Russian Tax Code.

To whom applicable?

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New Tax Code provisions not applicable to:

- Premiums as payments for service provision (i.e. substance of payment should be considered)
- Return of overpaid amounts



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- 2) To use wording of the Russian Tax Code (“premium” / “incentive payment”)**
- 3) To stress in a supply contract text that premium/incentive payment does not change sale price**

VAT on bonuses – end of chapter?

Evgeny Timofeev, Goltsblat B.L.P.

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Period 01/10/2011 – 30/06/2013

- Jaguar et al vs. Russian Government: the rules on the VAT consequences of change in value do not apply to bonuses
- Saturn-L (19AAC): rules only apply to change in value due to change in price or quantity – indeed
- Hence, no separate 01/10/2011 – 30/06/2013 period exists
- Look into the period from the beginning of time to 30/06/2013

Period from the Beginning of Time till 30/06/2013 (Dirol and Leroy Merlin Period)

- Case law overwhelmingly: bonuses have no direct effect on the VAT credits of purchasers (1 outlier in Northern Caucasus District though)
- Tax base of the suppliers has to be decreased first, and the suppliers have to issue corrective (corrected, negative) VAT invoices
- If not, purchasers have no grounds to decrease the VAT credits

Period as of 01/07/2013 and Overall...

- No direct statement in the contract that bonuses do affect value of supplies – no effect on tax base or VAT credits
- The topic is pretty much closed (unless you are in the Caucasus...)

Inventory losses – the new draft law

Expert:

V. Zaripov
Pepeliaev Group

Inventory losses – the new draft law

Vadim Zaripov, Pepeliaev Group

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Draft law # 254686-6 – key points

Inventory losses deduction in retail up to 0,75% of revenue under the following conditions:

1. Revenue out of self-service retail – not less than 70%
2. Separate accounting for revenue and losses
3. Auditor's report on internal controls
4. Stock-taking act, confirmed by an auditor
5. Goods under the list adopted by the RF Government

Draft Law #254686-6 – business community view

1. Why only self-service retail? Open trade format is a key criterion
2. 0,75% threshold is low and does not reflect real inventory losses volumes
3. Auditor's report on internal controls: lack of clarity
4. Auditors involved in stock-taking procedures: is that right?
5. List to be adopted by the RF Government: criteria shall be established by the Federal Law

Draft Law #254686-6 – deputies' view

1. Impact of state revenue: minus 10 – 15 bln.RUR
2. Retail prices will not decrease
3. Collision with the existing norms (pp. 5 p. 2, Art. 265 of the RF Tax Code)
4. No criteria are established to determine the list to be adopted by the RF Government
5. Auditors participating in stock taking procedures – is that right?
6. SMEs discriminated and unfair competition
7. Inventory losses issue shall be resolved by improving controls in retail, not by providing tax incentives (?)

***Law on preventing financial infringements –
consequences for taxpayers:***

Changes in tax audit procedure

Other changes in tax administration

Expert:

M. Vladimirov

Noerr



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Law on preventing financial infringements – consequences for taxpayers

Maxim Vladimirov, Noerr

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Changes to tax law (1)

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 - To request VAT invoices as well as primary and other documents
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Changes to anti-laundering law

- ‘Beneficial owner’ concept – *a person who is, directly or indirectly, the real owner of the client – a legal entity, or can control its operations*
- New obligations of banks
 - implement measures to identify beneficial owners of clients; update information on beneficial owners at least once a year
 - provide information on beneficial owners upon request to the Federal Service for Financial Monitoring
 - Administrative liability [fine up to RUB 500]
 - refuse to open an account / process a transaction in case of doubts
- New obligation of a bank’s client
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Taxation geography after the financial earthquake at Cyprus:

Latest changes in Cyprus' tax system;
Cyprus as jurisdiction for international structures – is there
an alternative?

Expert:

A. Seidov

Baker & McKenzie C.I.S



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Tax Geography after Financial Earthquake in Cyprus

Arseny Seidov, Partner, Baker & McKenzie

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Cyprus as a holding jurisdiction

- Statistics and tax perspective - what made Cyprus so attractive?
- March 2013 event – impact and takeaways
- Stability of Cyprus tax laws and reputation as a favorable holding jurisdiction – shift in investors' perception
- Current trends and assessment of risks of further changes
- Do you need to move your holding company elsewhere?

Alternatives and selection criteria

- Countries typically considered for setting up holding companies
- Factors to consider: upstream dividend taxation, DTT network, legal structure (JV vs. wholly-owned business, attracting PE/VC investor, pre-IPO, etc.), maintenance costs, substance requirements, tax residence and beneficial ownership, DTT provisions for real estate holding companies, CFC rules, availability of tax rulings, stability of tax laws and political regime, exit strategies
- Long-term trends and international tax policy developments: place of “offshore” jurisdictions in tax structures, bank secrecy regime, taxpayer data exchange and cooperation of tax administrations, OECD BEPS Report

Transition to new structure

- Immediate measure: set up new vehicle, transfer assets (cash, securities, etc.), subsequent liquidation
- Quick action: transfer of effective place of management, *i.e.* moving the fiscal residence
- Long-term alternative: migration of legal seat through cross-border merger, transfer of corporate seat, or incorporation of so-called Societas Europaea (SE) (extends only to EU)
- Timing and cost of holding company migration
- Commonly used investment structures

THANK YOU

Q & A

Tax administration: global and Russian trends and highlights from the recent OECD Forum

Experts:

D. Egorov

Federal Tax Service of the RF

A. Shpak

Ernst & Young



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Tax administration: global trends and practical implications for Russian businesses

Andrey Shpak (EY)

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Key global trends

- Media attention to corporate tax paid by multinationals in key jurisdictions
- Report “Addressing Base Erosion and Profit Shifting” (BEPS) released in February 2013:
 - International mismatches in equity and instrument characterisation
 - Application of treaty concepts to profits derived from delivery of digital goods and services
 - Tax treatment of related-party financial transactions
 - Transfer pricing
 - Effectiveness of anti-avoidance measures (GAAR, CFC etc)
 - Availability of harmful preferential regimes

Key global trends

- The European Commission action plan issued in December 2012:
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Practical implications

- Increased emphasis on substance of transactions and entities
- Increasing scrutiny of tax planning centered around intangibles and complex financial structures
- Close attention to structures that create “nowhere” income
- Sustainability of the structure assuming full value chain disclosure
- Build in flexibility to respond to changing regulatory requirements



Amendments to the Tax Code on appealing against acts of tax authorities - new direction

Expert:

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DS Law



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Conclusions

- Extension of terms for decision to come into force will provide a taxpayer with the possibility to file a well-weighed appeal.
- Amendments to the Tax Code on appealing against acts of tax authorities will decrease quantity of tax litigations in commercial courts due to the creation of additional bureaucratic impediments against efficient tax administration.
- Due application of amendments of new order of appealing against acts of tax authorities may be impeded by inexact definition of several norms of appealing.

Thank you for your attention
DS Law

Court practice on taxation matters

Expert:

B. Bruk

Dentons



Taxation of Cross-Border Transactions: Recent Court Practice Developments

Boris Bruk, Dentons

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Anti - Abuse Rules

- Scope of thin capitalization rules extended to foreign sister companies (the *Pirelli Tire Services* case)
- The cross-border refinancing structure deemed abusive for causing Russian tax base erosion (the *National Bank Trust* case)

PE cases

- Promotion/ marketing activities are not deemed 3rd party services, scope of the 3rd party PE rule narrowed (the *Berlin Chemie* case)
- The scope of the “dependent agent” PE provisions narrowed, signing the contracts does not always imply dependent agency (the *Fesco Lines* case)

Cross-Border VAT cases

- The courts pursue the formal approach in ruling on the place of supply of cross-border services:

- Legal services to foreign customers deemed rendered outside the RF, even where the services relate to in-Russia activities: (i) Russian real estate; (ii) services effectively consumed by Russian non-commercial organization; (iii) participation in Russian JV (the *Beiten Bukhardt* case)
- The sales activities of a Russian company are not recognized as a PE for foreign suppliers; marketing services to the suppliers are deemed rendered outside the RF, the PE term distinguished for VAT and profit tax purposes (the *Ingersoll – Rand Services* case)
- The contractual provisions cannot change VAT treatment of the cross-border services, as determined under the statutory “place of supply” rules (the *Ventrelt Holdings* case)



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Ul. Krasnoproletarskya 16, bld.3

127473 Moscow, Russia

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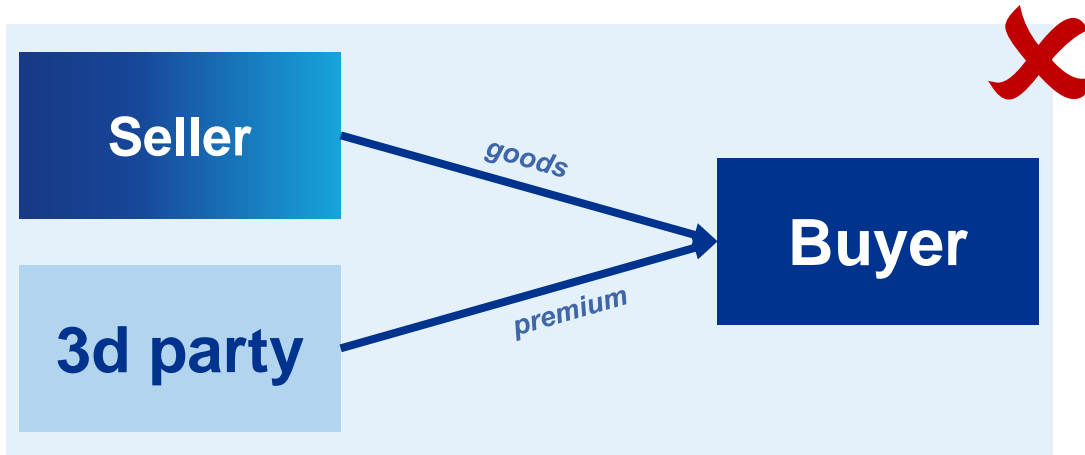
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Tax administration: global trends and practical implications for Russian businesses

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Dmitry Kulakov

Partner of Tax & Legal Department,
Head of Russian transfer pricing practice at
Deloitte & Touche

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Issues of preparing TP documentation

3 billion vs. 100 million

- A taxpayer must submit TP documentation if the amount of income from all **controlled** transactions concluded by that taxpayer with a single counterparty during a calendar year exceeds:
 - for 2012 – 100 million RUB
 - for 2013 – 80 million RUB
 - starting from 2014 all controlled transactions should be reported.

TP documentation is not required if:

- Prices are applied in accordance with anti-monopoly regulations or regulated by the relevant authority
- **Transactions are concluded with third parties (RF Ministry of Finance Letter No. 03-01-18/3238 of 11 February 2013)**
- Transactions involve securities and term transaction financial instruments circulated on the organised securities market
- The taxpayers conclude advance pricing agreements.

Agent/commissioner – thresholds

- Agents should only consider agency fees when calculating the threshold (Federal Tax Service Letter No. OA-4-13/18182 of 26 October 2012)
- Agents should consider the full amount of the transaction, not only agency fees, when calculating the threshold (RF Ministry of Finance Letter No. OA-4-13/1706 of 6 February 2013).

Aggregation of controlled transactions when preparing notifications and TP documentation (1/2)

I. For Notification:

- Aggregation of controlled transactions is limited and defined by the instructions for preparing notifications (Federal Tax Service Order No. MMV-7-13/524@ of 27 July 2012)
- The issue is more relevant when notification is prepared manually (average price if the deviations are minimal e.g., because of FX rates or ignoring minor differences in terms and conditions)

II. For TP documentation:

- **The RF Tax Code allows taxpayers to prepare TP documentation for a group of homogeneous transactions**
 - Item 5, Art. 105.7 (Methods); Item 1, Art. 105.15 (TP documentation content); Item 3, Art. 105.10 (Use of weighted average price).
- **The position of the RF Ministry of Finance (Letter No. 03-01-18/9012 of 22 March 2013)**

When controlled transactions are aggregated as a "group of homogeneous transactions", the following characteristics of the analysed transactions should coincide:

 - Functions carried out by the taxpayer in these transactions
 - TP method applied for these transactions
 - Profit level indicator of the analysed activities carried out by the taxpayer
 - Actual profit level indicators of comparable companies and the analysed company defined on the basis of financial information.
- **Commercial strategy**
 - According to item 10, Art. 105.5 of the RF Tax Code, the commercial strategy of the parties must be taken into account during the analysis of the commercial and financial terms of transactions of comparable and analysed companies
 - The OECD TP guidelines include **section A.3.1 Evaluation of a taxpayer's separate and combined transactions.**

Aggregation of controlled transactions when preparing notifications and TP documentation (2/2)

The OECD mentions the following examples of transactions that warrant an aggregation:

- Long-term contracts for the supply of goods or services;
- Rights to use intangible property;
- A range of closely linked products, when it is impracticable to determine the pricing for each individual product transaction;
- Licensing of manufacturing know-how and the supply of vital components;
- The routing of a transaction through other associated enterprises;
- A portfolio of products;
- Business strategies;
- Transfer of an intangible followed by an arrangement in which the transferor will continue to use the intangible transferred in a different legal capacity;
- Transfer of an ongoing concern that comprises multiple transfers of interrelated assets, risks of functions;
- A business restructuring and the operation of the business post-restructuring;
- **By countries:**
 1. The U.S. transfer pricing regulations call for an aggregated examination regarding interrelated transactions (groupings of products and types of services that reflect reasonable accounting, marketing or other business practices);
 2. In German tax law, an aggregated examination is codified in relation to a cross-border business restructuring, provided that a hypothetical arm's length test is made.



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General review of amendments

- High speed of passing the law. Absence of material corrections.
- Prime task of amendments – reduction of quantity of tax litigations in courts, expanding taxpayers possibilities to exercise their rights.
- What shall be provided to achieve assigned tasks:
 - saving of taxpayer cost for filing and maintenance of appeal;
 - determination of requirements of form of appeal.
- Current progress. Law approved by the Council of Federation on the 26th June, 2013 and passed to the President. Expected date of coming into force – August 2013.

Substantial amendments

- Mandatory pre-trial dispute resolution procedure for all acts of tax authorities of a non-normative nature and their actions or inaction. Exception for decisions of the Federal Tax Service of Russia.
- Term for decision to come into force (for taxpayer to file an appellate appeal): 1 month.
- Term for filing of appeal which has not come into force : 1 year. Acts of the Federal Tax Service of Russia – 3 months.
- Term for consideration of appeal: 1 month + 1 month and 15 days + 15 days.

Conclusions

- Extension of terms for decision to come into force will provide a taxpayer with the possibility to file a well-weighed appeal.
- Amendments to the Tax Code on appealing against acts of tax authorities will decrease quantity of tax litigations in commercial courts due to the creation of additional bureaucratic impediments against efficient tax administration.
- Due application of amendments of new order of appealing against acts of tax authorities may be impeded by inexact definition of several norms of appealing.

Thank you for your attention
DS Law



The Association of European Businesses (AEB)

Ul. Krasnoproletarskya 16, bld.3

127473 Moscow, Russia

Tel.: +7 (495) 234 27 64

www.aebrus.ru

Inventory losses – the new draft law

Vadim Zaripov, Pepeliaev Group

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Draft law # 254686-6 – key points

Inventory losses deduction in retail up to 0,75% of revenue under the following conditions:

1. Revenue out of self-service retail – not less than 70%
2. Separate accounting for revenue and losses
3. Auditor's report on internal controls
4. Stock-taking act, confirmed by an auditor
5. Goods under the list adopted by the RF Government

Draft Law #254686-6 – business community view

1. Why only self-service retail? Open trade format is a key criterion
2. 0,75% threshold is low and does not reflect real inventory losses volumes
3. Auditor's report on internal controls: lack of clarity
4. Auditors involved in stock-taking procedures: is that right?
5. List to be adopted by the RF Government: criteria shall be established by the Federal Law

Draft Law #254686-6 – deputies' view

1. Impact of state revenue: minus 10 – 15 bln.RUR
2. Retail prices will not decrease
3. Collision with the existing norms (pp. 5 p. 2, Art. 265 of the RF Tax Code)
4. No criteria are established to determine the list to be adopted by the RF Government
5. Auditors participating in stock taking procedures – is that right?
6. SMEs discriminated and unfair competition
7. Inventory losses issue shall be resolved by improving controls in retail, not by providing tax incentives (?)



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