

DEVELOPMENT OF THE RUSSIAN TAX SYSTEM: RESULTS OF THE FIRST HALF OF 2016 AND PERSPECTIVES



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OPENING REMARKS



Association
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Businesses

Alexandra Kadet

Federal Tax Service

Обмен информацией между компетентными органами для налоговых целей

– обновленный инструмент реализации мер по борьбе с уклонением от налогообложения в международном масштабе

КАДЕТ АЛЕКСАНДРА ВАЛЕРЬЕВНА

НАЧАЛЬНИК ОТДЕЛА ОБМЕНА ИНФОРМАЦИИ И ВЗАИМНОЙ АДМИНИСТРАТИВНОЙ ПОМОЩИ
УПРАВЛЕНИЯ СТАНДАРТОВ И МЕЖДУНАРОДНОГО СОТРУДНИЧЕСТВА ФНС РОССИИ

ИЮНЬ 2016

Обмен информацией

5

- ▶ По запросу
- ▶ Спонтанный
- ▶ Автоматический
- ▶ Автоматический о финансовых счетах

Правовая база для обмена информацией в налоговых целях

- ▶ межправительственные соглашения (конвенциями) об избежании двойного налогообложения в отношении налогов на доходы (капитал) и имущество, заключенными между Российской Федерацией (или СССР) и иностранными государствами
- ▶ межправительственные соглашения о сотрудничестве и взаимной помощи по вопросам соблюдения налогового законодательства, заключенными между Российской Федерацией и государствами-участниками СНГ
- ▶ межправительственные соглашения о сотрудничестве и обмене информацией по вопросам соблюдения налогового законодательства, заключенными между Российской Федерацией и отдельными иностранными государствами
- ▶ межведомственные соглашения, заключенными между МНС России и компетентными органами отдельных иностранных государств
- ▶ **Конвенция о взаимной административной помощи по налоговым делам от 25 января 1988 г. (в ред. Протокола от 27.05.2010), подписанная Российской Федерацией в г. Канны 3 ноября 2011 г. В мае 2016 года в Пекине было подписано Многостороннее соглашение компетентных органов об автоматическом обмене финансовой информацией.**

Автоматический обмен информацией о финансовых счетах (1)

с 2017 г.	Страны-участницы CRS MCAA (80)		с 2018 г.
Anguilla, Argentina, Barbados, British Virgin Islands , Bulgaria, Cayman Islands, Colombia, Croatia, Curacao, Cyprus , Faroe Islands, Gibraltar , Greenland, Guernsey , Hungary, Iceland, India, Isle of Man , Jersey, Korea, Latvia, Lithuania, Malta, Mauritius, Montserrat, Niue, Romania, San Marino, Seychelles, Turks&Caicos Islands	Страны-участницы CbC MCAA (33) <div><div>Belgium, Bermuda, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Mexico, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, United Kingdom</div><div>Australia, Austria, Chile, Costa Rica, Japan, Malaysia, Switzerland</div></div>		Albania, Andorra, Aruba, Belize, Canada, China (People's Republic of), Ghana, Indonesia, Monaco, New Zealand, Sint Maarten
	Nigeria, Senegal		Antigua and Barbuda, Cook Islands, Grenada, Marshall Islands, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa
Azerbaijan, Brazil, Cameroon, El Salvador, Gabon, Georgia, Guatemala, Israel, Kazakhstan, Kenya, Moldova, Morocco, Philippines, Russia , Saudi Arabia, Singapore, Tunisia, Turkey, Uganda, Ukraine, United States			
Страны-участницы MC on MATC (94)			

Связь с новейшими тенденциями в международном налогообложении

- В мире:
 - **BEPS**
 - ✓ 1. Электронная коммерция
 - ✓ 2. Гибридные инструменты
 - ✓ 3. Контролируемые иностранные компании
 - ✓ 4. Вычет процентов
 - ✓ 5. Недобросовестная налоговая конкуренция
 - ✓ 6. Злоупотребление международными соглашениями
 - ✓ 7. Постоянное представительство
 - ✓ 8,9 и 10. Трансфертное ценообразование

Связь с новейшими тенденциями в международном налогообложении

- **В России:**

- *Было:*

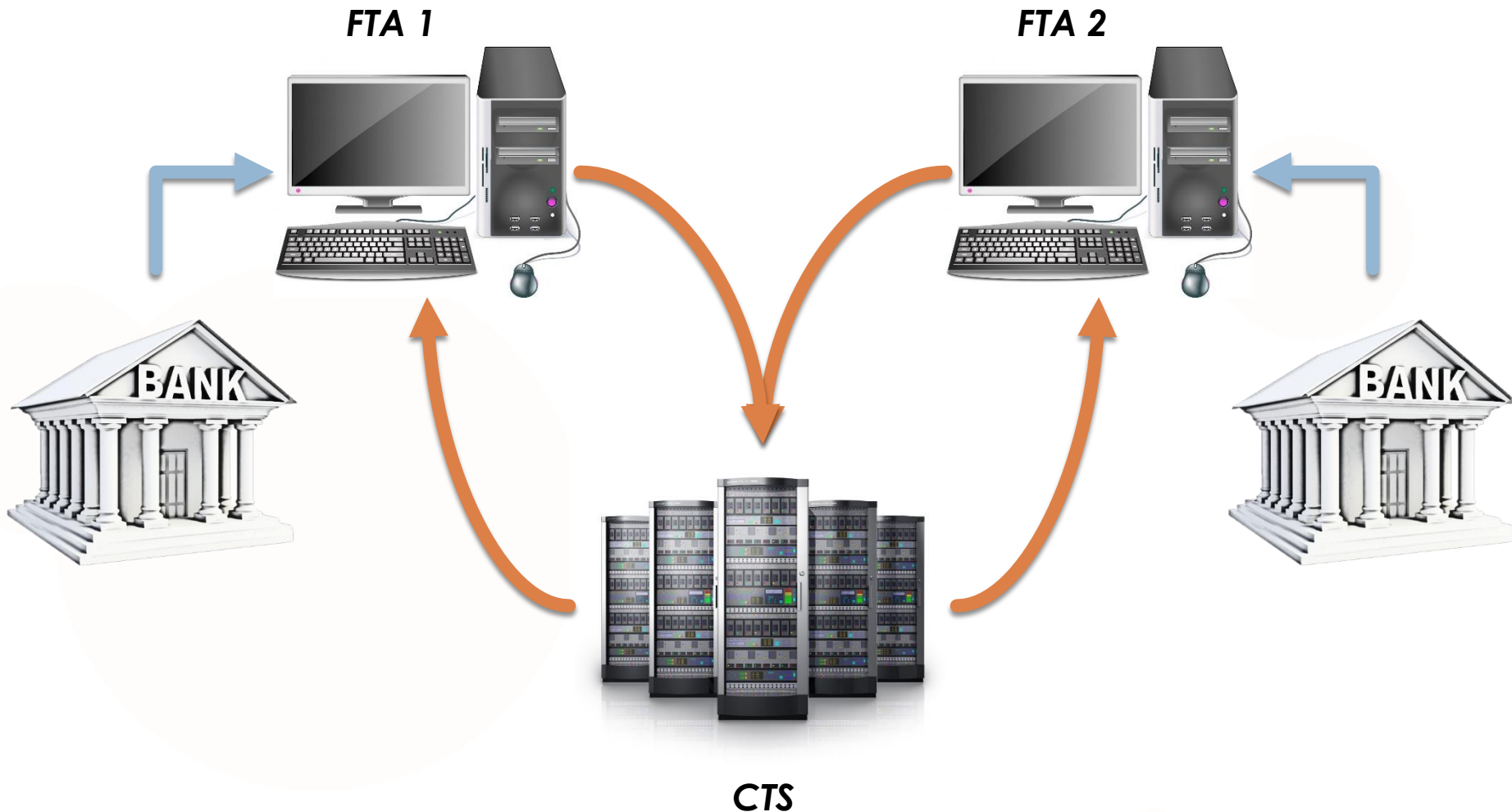
- ✓ Трансфертное ценообразование
 - ✓ Недостаточная капитализация
 - ✓ Фиктивные сделки
 - ✓ Налогообложение физических лиц

- *Стало:*

- + Бенефициарный собственник
 - + Контролируемые иностранные компании
 - + Резидентство юридических лиц

Автоматический обмен информацией о финансовых счетах (2)

10



Автоматический обмен информацией о финансовых счетах – текущий момент становления системы в России

- ▶ Формирование многоуровневой законодательной базы
 - ▶ Законопроект
 - ▶ Поправки в НК РФ
 - ▶ Подзаконные акты
- ▶ Разработка процедур и технологических решений
 - ▶ Механизм взаимодействия с ФНС



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Nadezhda Kuzmina

Ministry of Finance

Svetlana Stroykova

PwC

***Country-by-country reporting
– draft law***

Country-by-country reporting draft law - key points

- CbCR must be submitted for financial years starting from **1 January 2017**. 2016 reports may be submitted **on a voluntary basis**;
- CbCR is to be filed only by those groups with aggregate revenues of **at least RUB 50 billion** in **the financial year preceding** the reporting year as per their consolidated financial statements;
- CbCR must be submitted by **MNE** groups with a definition given in the draft law;
- The **financial year** is defined as the period for which a MNE group's consolidated financial statements are prepared;
- Reports are to be submitted **within 12 months** from the end of the financial year;

Country-by-country reporting draft law - key points

- Members of a MNE group must submit **notification of their participation in the group** on or before **20 September** of each calendar year;
- The form of notification is to be developed by the Federal Tax Service (FTS);

The following members of a MNE group must submit CbCR:

1. a parent company of a MNE group (member that directly or indirectly participates in the capital of other group members);
2. a taxpayer that is an authorised member (authorised by the parent company, so called “surrogate parent” under the OECD terms);
3. a taxpayer that is a member of a MNE group whose parent company is not required under domestic law to submit CbCR, or which is a tax resident of a jurisdiction that is not currently party to an international agreement on automated exchange of information on CbCR forms.

Country-by-country reporting draft law - key points

Exemption from CbCR filing requirements is possible if two conditions are met:

- CbCR that complies with the Russian Tax Code must be submitted within **12 months** from the end of the financial year to the tax authorities of the country where the authorised member of the MNE group is a tax resident (or, in which the activities of such member have led to the creation of a PE); *and*
- this country requires filing of CbCR, this country is a party to the international agreement on automated exchange of information on CbCR forms and was not notified by the FTS about systematic failures to perform its data sharing obligations.

Country-by-country reporting draft law - key points

CbCR includes the following information:

- total revenues earned from transactions, incl. from related-party and non-related-party transactions;
- profits (loss) before tax;
- corporate profits tax paid (tax on income [profits] paid by a foreign company);
- corporate profits tax assessed in the current year (tax on income [profits] assessed by a foreign company in the current year);
- shared capital (stated capital);
- accumulated (undistributed) profits;
- number of employees;
- tangible assets other than cash and cash equivalents;
- identification information about each member of the group indicating the country of incorporation and tax residency as well as the type of activity of each member.

Arseny Seidov

Baker & McKenzie

Latest VAT Developments

- Taxation of Electronically Supplied Services***
- Confirmation of 0% Export VAT***

Input VAT recovery on export transactions: new rules

- Timing benefits for input VAT recovery for exporters: Federal Law #150-FZ dated May 30, 2016 extends the general rules on input VAT recovery to taxpayers-exporters of non-raw goods
- Starting from July 1, 2016, input VAT may be recovered prior to documentary confirmation of 0% VAT rate for export operations upon:
 - ❑ entrance of purchased goods (works, services), proprietary rights into exporter's books, and
 - ❑ receipt of invoices from suppliers
- Exporters are still required to provide documentary confirmation of the 0% VAT rate for export transactions within 180 days starting from the day of export customs procedure
- The new rules do not apply to raw goods – mineral products, chemical, wooden products, charcoal, pearls, precious and semi-precious gemstones, precious metals and base metals

VAT on Electronically Supplied Services (the "ESS")

The Law (Draft Bill #962487-6):

- ☐ passed the 3rd hearing in the Russian State Duma on June 15, 2016 and should be approved by Federation Council today
- ☐ is expected to come into force on January 1, 2017

The Law determines the place of supply for certain electronic services at the **location of the customer**:

- ☐ with respect to individuals (*if at least one of the criteria is met*):
 - 1) place of residence
 - 2) location of bank / e-money operator used for payment
 - 3) cell phone number country code (+7)
 - 4) IP-address

NB: special tie breaker rules in case of conflict of criteria

- ☐ with respect to companies and entrepreneurs: the place of state registration

List of "ESS"

- The ESS are **provided through the Internet** with the use of **information technologies** and include:
 - ☐ software and apps downloads (computer games), including updates, additional functions
 - ☐ remote access to software and computer games (SaaS)
 - ☐ advertising services in the Internet (e.g., contextual, banner, targeted advertising)
 - ☐ electronic marketplace, trading platform services
 - ☐ web design, development, and maintenance (including digital resources)
 - ☐ domain name services, hosting services
 - ☐ IaaS and PaaS
 - ☐ entertainment content (including movies, books, music, pictures)
 - ☐ other mentioned in the Law
- The Law **excludes from the list** of the ESS:
 - ☐ electronic commerce with supply of material goods (works, services)
 - ☐ supply of software, computer games and databases on tangible medium
 - ☐ consulting services via email
 - ☐ Internet access services

VAT collection models in B2B and B2C sales

- **B2C:** If non-resident suppliers or payment platforms collect funds directly from Russian individuals, they are required to:
 - ☐ register with the Russian tax authorities
 - ☐ file VAT returns and pay the VAT through their own taxpayer's account
- **B2B:** In case of supplies to Russian corporate customers (and individual entrepreneurs), the latter are required to act as tax agents
- *In other cases* Russian intermediaries (Russian companies, entrepreneurs and subsidiaries of foreign companies located and registered in Russia) also act as the tax agents
- If there are *several intermediaries* in the supply chain *the company (entrepreneur) that settles accounts directly with private individuals* is the tax agent, regardless of the presence of an agreement with foreign supplier

Important issues to consider

- No PE (permanent establishment) principle is set forth in new Article 306(14) of the Russian Tax Code
- Ban on input VAT recovery for non-resident suppliers and payment platforms
- The **VAT exemption for software** and database **licenses** remains unchanged, but expected to be reconsidered in the fall of 2016
- Non-resident suppliers and non-resident payment platforms registered with the Russian tax authorities **are not required** to prepare VAT invoices and maintain purchase and sales ledgers for Russian VAT purposes
- Document confirming for place of supply in B2C transactions is the **transaction register** with data on value of the ESS to the customer and the 4 criteria determining customer location

Nina Gulis
KPMG

***Tax Benefits for Investment
Projects.
New Opportunities for Investors***

Special Investment Contract (SPIC): General Provisions



SPIC Requirements

- Capital Investments: **no less than RUB 750 mln**
- Minimum threshold for investments: may be reduced
– if provided by the regional / municipal legislation
- Certain industries activities
- List of documents (including business plans)



SPIC Duration

- **The period the project reaches its operational profit plus 5 years** but overall no more than 10 years

Industries



Machine Building



Tooling



Iron and Steel



Chemicals



Pharmaceuticals,
Medicine
and Biotechnology



Consumer Goods



Forest, Paper
and Wood-Processing



Electronics
and Radioelectronics



Aircraft Industry



Shipbuilding



Telecommunications



SPIC Advantages

- **Guaranteed level of total tax burden** once SPIC is signed
- Simplified access to state orders
- Expedited and simplified procedure of getting the status of a Russian manufacturer
- Granting of **additional benefits** under SPIC is expected
- SPIC can be signed on **federal, regional or municipal levels**

New tax concessions*

	Special Investment Contract (SPIC) (amendments based on the Federal Lax No.144-FZ as of 23.05.2016)	Regional Investment Projects (amendments based on the Federal Lax No.144-FZ as of 23.05.2016)	Regional Tax Benefits
Order	Conclusion of SPIC	Inclusion into the list of regional investment projects (except for 15 regions of Far East and Siberia)	Conclusion of the Investment agreement and/or inclusion into the approved list (in most regions) or declaration
Investments threshold	750 mln RUR	50-500 mln RUR	Depending upon the region
Industries	Limited industries	All industries (with certain restrictions)	Depending upon the region
Effective Profits Tax Rate	minimum 0% (subject to regional legislation) from the tax/reporting period when the taxable profit arises until the SPIC expires Additional benefit: Application of the accelerated depreciation rate	For all regions (except for 15 regions of Far East and Siberia): minimum 10% (subject to regional legislation) starting from the tax/reporting period when the first taxable profit arises until the amount of tax concessions becomes equal to the amount of capital investments	minimum 15.5% (reduction of the regional part by 4.5% as a maximum) Different terms of application
Guaranteed level of tax burden	Applicable	N/A	N/A

**The list of tax supporting measures is not limited by the indicated above*

Approximate step-plan

Identification of the types of the incentives/forms of government support

- Elaboration of the major targeted incentives and forms of government support (e.g., tax concessions, guarantees / subsidies from the government, etc.)
- Assessment of the possibility to conclude a SPIC
- Evaluation of possible options of how the targeted incentives and forms of government support can be achieved

Preparation of documents that should be submitted to the authorities (including a business plan)

- Choosing the optimal form for concluding a SPIC (e.g., federal or regional level, etc.)
- Elaboration and clarification of specific issues that need to be worked through before concluding a SPIC (inter alia through communications with the government authorities)

Meetings with the authorities and negotiation process

- Preparing draft of a SPIC, business plan and other supporting documents taking into account the company's specifics that should be submitted to the authorities
- Reviewing the provisions of a SPIC / amendments to a SPIC (if any) suggested by the government authorities after the review process

Conclusion of a SPIC or report of other measures of government support

- Communications with the government authorities during the all the stages of the process, contacting and organizing meetings with the authorities, participation in negotiation process

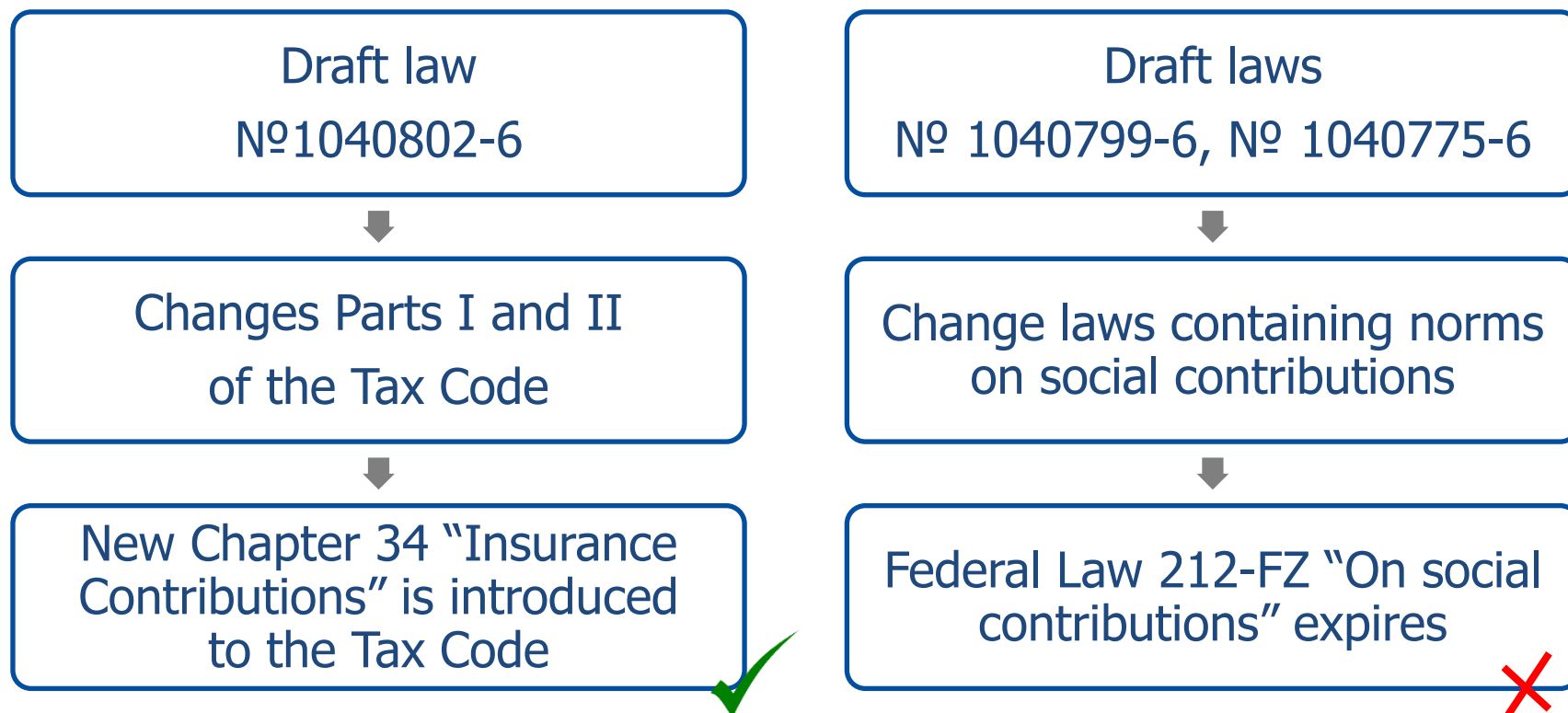
Anna Borisova

Deloitte & Touche

Back to the Future: New Law Passes Administration of Social Insurance Contributions On to Tax Authorities

New legislation on insurance contributions as of 1 January 2017

The State Duma adopted in the third reading draft laws transferring the administration of social contributions to the tax authorities:



Changes expected starting 1 January 2017

Function	Currently	Starting from 1 January 2017	Remains unchanged
Control and admin	PF, SIF	TI	SIF: insurance contributions against accidents in workplaces and illness caused by professional activities
Payment to	PF, FMIF, SIF	TI	The deadlines are the same, but the payments should be made separately
Reporting to	PF, SIF	TI	PF: report of personal data (SZV-M) SIF: quarterly reporting on "accidents" insurance
Audit by	PF, SIF	TI	Expenses for payment of insurance coverage for sick and maternity leaves are audited by SIF

The payer, the main rate of insurance contributions for 2017, the object and base for insurance contributions, and the amounts excluded from the base for calculating insurance contributions are left the same as in 212-FZ

Changes expected starting 1 January 2017



New type of TI report replaces RSV-1 and FSS-4



New deadlines for providing reports



Audit of insurance contributions by TI



Penalties according to the Tax Code





Ksenia Litvinova

Pepeliaev Group

Tax administration: new laws

Federal Law No. 134-FZ dated 1 May 2016

The following information is no longer treated as a tax secret:

- amounts of arrears of taxes, late payment interest and penalties
- the average staff number
- amounts of taxes and levies paid
- sums of income and expenses as per the financial statements

Federal Law No. 130-FZ dated 1 May 2016

- ✓ Opens up an opportunity for preliminary tax rulings to be obtained
- ✓ Adds new developments to the procedures for an audited taxpayer to review materials produced following the tax audit of it and additional tax control measures

Federal Law No. 130-FZ dated 1 May 2016

- ✓ Makes it possible for a decision of a tax authority that has come into effect to be suspended at the pre-trial stage
- ✓ Provides an opportunity for an organisation to be involved when an appeal statement is considered
- ✓ Compels the tax authority to independently remedy the infringements of the complaining party's rights

Elena Fetisova

PG

ASK VAT-2 system functioning - first results

ASK NDS-2 starting January 2015

- Extended electronic VAT returns
- New p. 8.1. to the Article 88 of the Tax code
- Updated “ASK NDS-2” is put into operation (~55 risk criteria)
- VAT auto-requests are issued to tax payers

First results

- Transparency and speed of control
- Omissions in 10% of VAT returns
- 20-30% of the taxpayers executes re-submission
- Additional compliance efforts on response to the tax authorities
- Additional compliance efforts on response to the contractors

To be continued

Expected:

- Improvement of the technical tools and systems by both tax authority and taxpayers
- Electronic document flow between custom and tax authorities starting Q4 2015
- Common approach for claiming input VAT related to export activities starting Q2 2016

For consideration:

- Taxpayer's rights under the Article 88 vs Articles 93, 93.1
- Auto-response status
- Electronic registration of VAT-invoices

Alexander Erasov

Goltsblat BLP

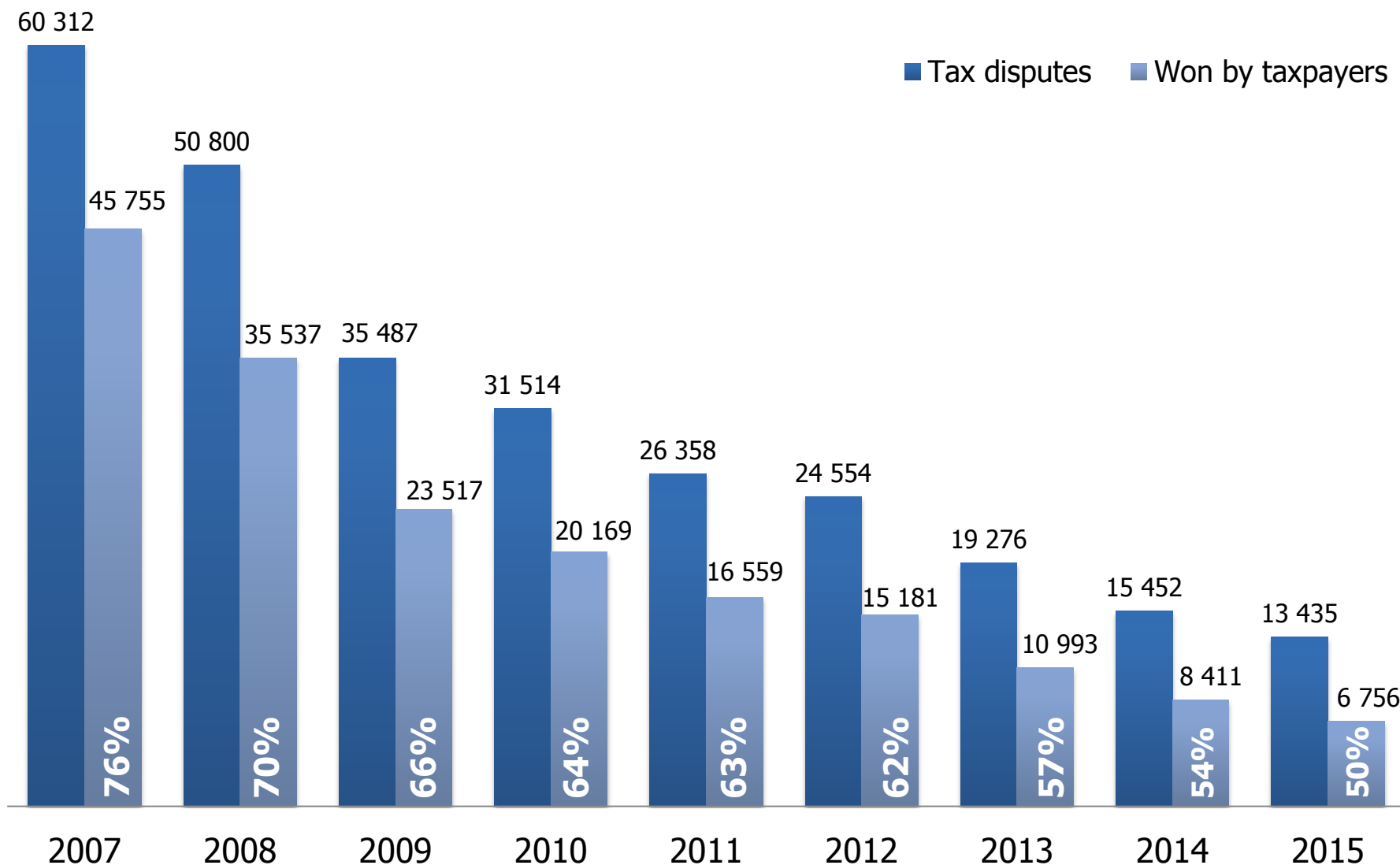
TAX AUDITS - NEW TRENDS

***DECRIMINALISATION OF ECONOMIC
CRIMES: LEGISLATIVE CHANGES***

TOP TAX AUDIT TRENDS

- ✓ Tax authorities **working standards** are rising very fast
- ✓ **Well-organised attacks** on significant targets (rather than seeking technical mistakes)
- ✓ **Deeper investigation** of relevant facts, documents and legislation
- ✓ Tax offices have become much more communicative (and the number of **questionings has increased** significantly)
- ✓ The age of **personal material liability** for tax debts is coming
- ✓ It has become much more **difficult to win** a tax dispute (but still possible)...
- ✓ ... and **to find** a tax dispute as well

WHAT ABOUT THE STATISTICS?



HOW TO DEFEND YOURSELF

- ☐ Monitor **compliance** and do your homework carefully
- ☐ Apply effective **internal control** procedures
- ☐ **Instruct** non-tax staff
- ☐ Think about **evidence** beforehand (never be limited to formalistic arguments)
- ☐ **Form hypotheses** of potential attacks
- ☐ Develop complex **tactics** for further actions and be consistent
- ☐ Appraise your strengths and weaknesses **appropriately**
- ☐ Do not miss time and opportunities - **pre-litigation** is not just a formality!!!
- ☐ Scrutinise **court decisions**

DECriminalISATION OF ECONOMIC CRIMES

DECriminalISATION PACKAGE ADOPTED BY THE STATE DUMA*:

- ✓ Relief from criminal liability more accessible
- ✓ Monetary sanctions instead of imprisonment
- ✓ Procedure established for returning seized documents
- ✓ Meetings with notaries allowed
- ✓ Thresholds for economic crimes exceeded

**** What will the real impact be on big business?***

TRESHOLDS FOR TAX CRIMES

LARGE SCALE

where tax arrears for a period
within three financial years:

NOW

- exceeds **RUB 2m**
and 10% of the
total due taxes **OR**
- exceeds **RUB 6m**

THEN

- exceeds **RUB 5m**
and 25% of the
total due taxes **OR**
- exceeds **RUB 15m**

VERY LARGE SCALE

where tax arrears for a period
within three financial years:

NOW

- exceeds **RUB 10m**
and 20% of the
total due taxes **OR**
- exceeds **RUB 30m**

THEN

- exceeds **RUB 15m**
and 50% of the
total due taxes **OR**
- exceeds **RUB 45m**

Dzhangar Dzhalchinov

Dentons

Recent Developments in Practice in Tax Disputes

Transfer Pricing

«~»

Minvody-Krovlya (case # APL16-124)

A blank shot: the Finance Ministry's letter is not about the right of local tax authorities to monitor prices

«-/+»

StavGazoborudovanie (case # 308-KG15-16651)

Can the local tax authorities monitor prices in office and field tax audits???

«?»

Delovoy tsentr Minaevsky (case # 305-KG16-4920)

A dispute over the procedure, but with transfer pricing elements

Beneficial ownership



Bank Intesa (case # A40-241361/15)

The lender (Luxembourg) does not have the status of beneficial owner, a shareholder of the bank (Italy) is declared such and the DTT with Italy is applied to the interest paid

Other key court decisions on tax matters



Gazpromneft-Chelyabinsk (case # A76-15351/2015)

Cash-pooling



Bonduelle Kuban (case # A32-8522/2015)

Cost-sharing



Bluemotion (case # A40-215139/15)

Call center



Parexel (case # A40-194412/15)

Place of clinical trial services



Vadim Zaripov

Deputy Chairperson of the AEB Taxation Committee, Pepeliaev Group

CLOSING REMARKS

Q&A