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AEB ANTI-CRISIS TAX CONFERENCE. NEW LIFE IN NEW REALITY



July 6 , 2022

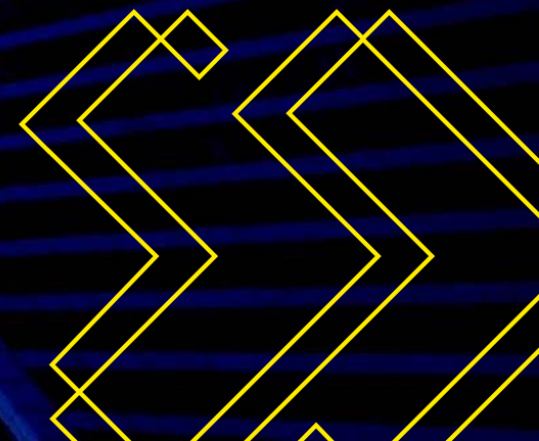
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2

OPENING REMARKS

Tadzio Schilling

**CEO Association of European
Businesses**

OPENING REMARKS





NINA GOULIS

Chairperson of the AEB Taxation Committee, Kept

KSENIA LITVINOVA

**Deputy Chairperson of the AEB Taxation Committee,
Pepeliaev Group**

MODERATION





PROGRAM

SESSION 1. OPEN DIALOGUE WITH AUTHORITIES

Anti-crisis tax agenda: what we have now and what we expect Current issues of tax administration

Alexey SAZANOV, Deputy Minister of Finance of the Russian Federation
Mikhail ORLOV, Head of the Legal and Taxation Department, Kept

SESSION 2. CURRENT ASPECTS OF FOREIGN BUSINESS OPERATIONS IN RUSSIA: ANTI-CRISIS AGENDA

Taxation aspects of operations suspension for foreign businesses in Russia

Maria KABANOVA, Senior Lawyer of Tax Practice, SEAMLESS Legal

Taxation aspects of intragroup anti-crisis financing

Andrey GRACHEV, Head of Tax Practice, Birch Legal

Currency limitations on loans, dividends, royalties, other payments: what's allowed and in what ways

Vasily ERMOLIN, Attorney-at-law, Partner, ADVANT Beiten

Tax crimes – adopted and upcoming changes in legislation

Alexander ERASOV, Lawyer, Partner, MEF

SESSION 3. ISSUES AND SOLUTIONS. PRACTICE OF DEVELOPING KEY PROBLEMATIC AREAS OF FOREIGN BUSINESS IN RUSSIA

Key court tax cases

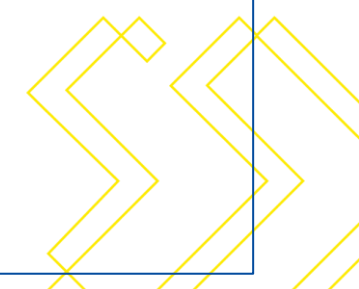
Raisa ALEKSAKHINA, Partner, Technologies of trust

Issues of including royalties and "agency" VAT on royalties in customs value: customs and tax aspects

Inna ELISANOVA, Director of Global Trade and
Customs Practice, B1

VAT on electronic services issues

Arseniy SEIDOV, Partner, Baker McKenzie





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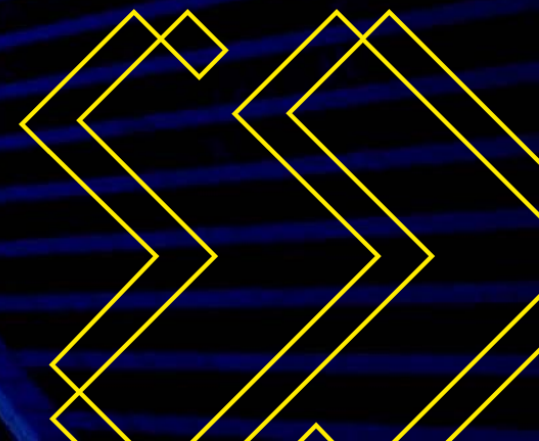


KEY CHANGES IN TAX LEGISLATION

Mikhail Orlov, Kept



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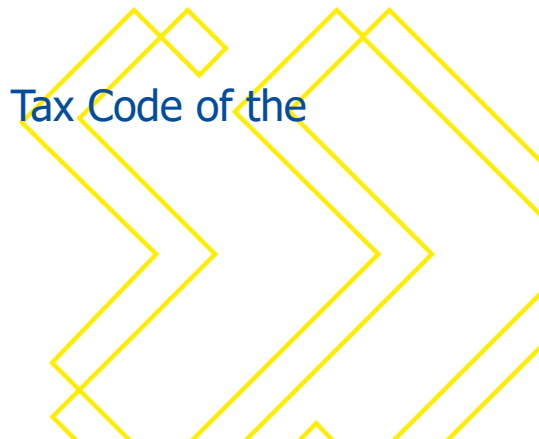
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TAX BILLS STATUS

- **Draft Bills (spring session of State Duma)** – passed 3rd hearing in State Duma. Scheduled for FC
 - №46702-8 “On the unified tax account”
 - № 136059-8 “On certain tax support measures”
 - № 106872-8 “On the taxation of digital rights”
 - № 140596-8 “On taxation of SPICs participants”
 - № 127004-8 “On the establishment of unified rate of insurance contributions to state non-budgetary funds”
- Federal Law № 67-FZ of 26 March 2022 «On Amendments to Part One and Part Two of the Tax Code of the Russian Federation and Article 2 of the Federal Law «On Amendments to Part Two of the Tax Code of the Russian Federation»» (On certain tax support measures)
- Federal Law № 52-FZ of 09 March 2022 «On Amendments to Articles 4 and 45 of Part One of the Tax Code of the Russian Federation» (on granting of certain powers to the Government of the Russian Federation)





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ANTI- CRISIS TAX MEASURES ADOPTED 1/2

These anti-crisis tax measures are imposed by the Federal Law of 26.03.2022 № 67-FZ (except deferral of insurance contributions)

General measures

- Deferral of insurance contributions for Q2 2022 and Q3 2022 for 12 months (industries do not match)
- Abolition of the charge of the two- fold rate penalty from the 31st day of the delay- from 9 March 2022 to 31 December 2023
- The threshold for controlled transactions with foreign counterparties for transfer pricing purposes was raised from 60 million RUB. to 120 million RUB. per calendar year

Value added tax

- The list of persons entitled to apply the declarative procedure for VAT recovery from 2022 to 2023 without providing a bank guarantee or surety if the minimum conditions are met is significantly expanded
- Zero VAT rate in terms of accommodation services in hotels and rent services of tourist facilities under certain conditions is established



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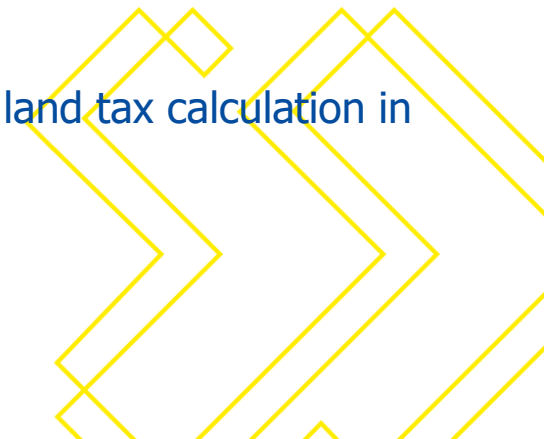
ANTI- CRISIS TAX MEASURES ADOPTED 2/2

Corporate tax

- The «preferential intervals» for interest accounting for income tax purposes were extended up to December 31, 2023 (it used to be up to the end of 2021)
- Shift to calculating foreign exchange differences only in case of termination/ fulfillment of assets/ obligations, without intermediate revaluation: for foreign exchange losses - from 2023 to 2024, for foreign exchange gains - from 2022 to 2024
- To calculate the "thin capitalization" a fixed rate of foreign currency - at the current rate, but not higher than the rate on February 1, 2022 - is applied up to December 31, 2023
- Possibility of tax-free debt forgiveness under loan (credit) agreements with foreign companies concluded before March 1, 2022
- Reduction of income tax rate to 0% for IT companies (if certain conditions are met) – for the period from 2022 to 2024

Other measures

- Exemption from taxation of income received in the form of material benefit from 2021 to 2023
- The cadastral value of real estate remains at the level as on January 1, 2022 for the property and land tax calculation in 2023





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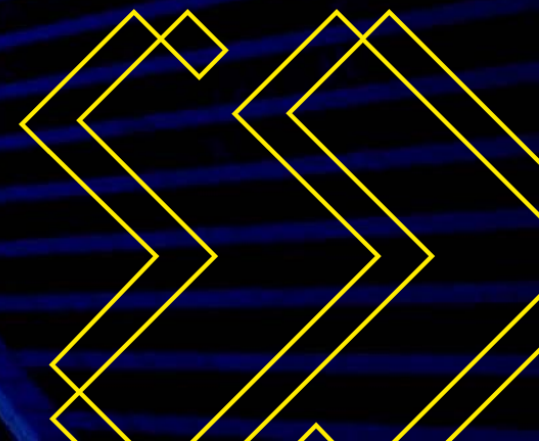


SUSPENSION OF COMMERCIAL ACTIVITY IN RUSSIA: TAX ASPECTS

Maria Kabanova, SEAMLESS Legal



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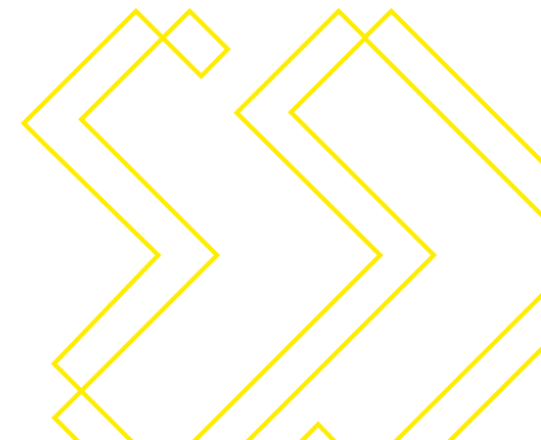




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SUSPENSION OF COMMERCIAL ACTIVITY IN RUSSIA

- No defined legal term in Russia**
- Commercial aspects: negotiations with customers and contractors**
- Labour law aspects: staff redundancy vs. reduction of salary costs**
- Tax aspects:**
 - Reduction of profits while conserving the routine costs
 - Transfer pricing aspects
 - Payment of contractual fines and severance compensations
 - Permanent establishment issues
 - Maintenance of routine tax and accounting functions





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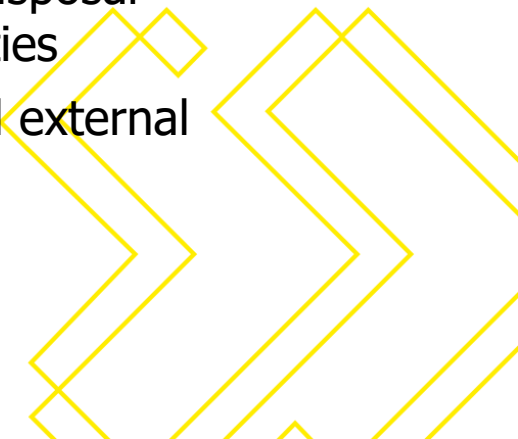
DORMANCY VS. LIQUIDATION

Dormancy

- No defined legal term in Russia
- Commercial aspects and labor law aspects: termination of commercial agreements and dismissal of the employees
- Maintenance of routine reporting and tax payment obligations
- Normally conserved for a 3-year period, to mitigate the tax implications stemming from a tax audit

Liquidation

- Highly formalised process in Russia
- Should be fulfilled within a 1-year term (in practice up to 18 months, including the pre-liquidation steps)
- Frequently entails a tax audit for a 3-year period
- Pre-liquidation due-diligence and disposal (restructuring) of assets and liabilities
- Risks of intentional bankruptcy and external management?





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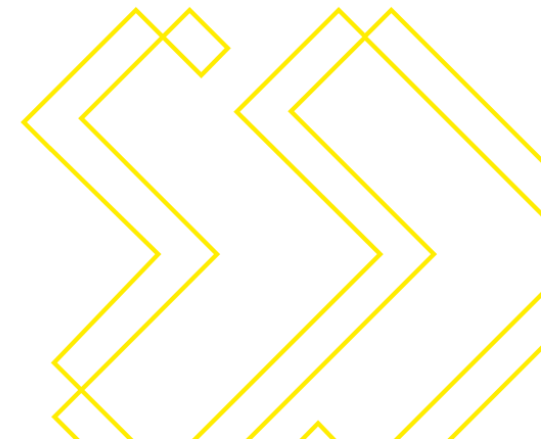
REORGANISATION OF LOCAL BUSINESS

Reorganisation of participation interest

- Sale of shares (participation interest) at a nominal value
- Buy-back scenarios
- Tax issues to consider for a management buy-out
- Risk of transaction requalification
- Earn-out clause, warranties and indemnities
- Pre-transaction restructuring: assets and liabilities

Reorganisation of local activities

- Staff redundancy and reduction of profits as a trigger for a state control
- Increase of volume of controlled transactions and VAT aspects
- Risk of requalification of operations and KYC issues
- PE aspects in Russian and abroad





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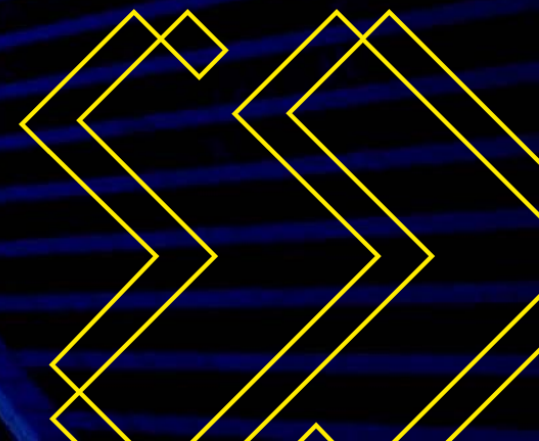


TAX ASPECTS OF INTRAGROUP CRISIS FINANCING

Andrey Grachev, Birch Legal



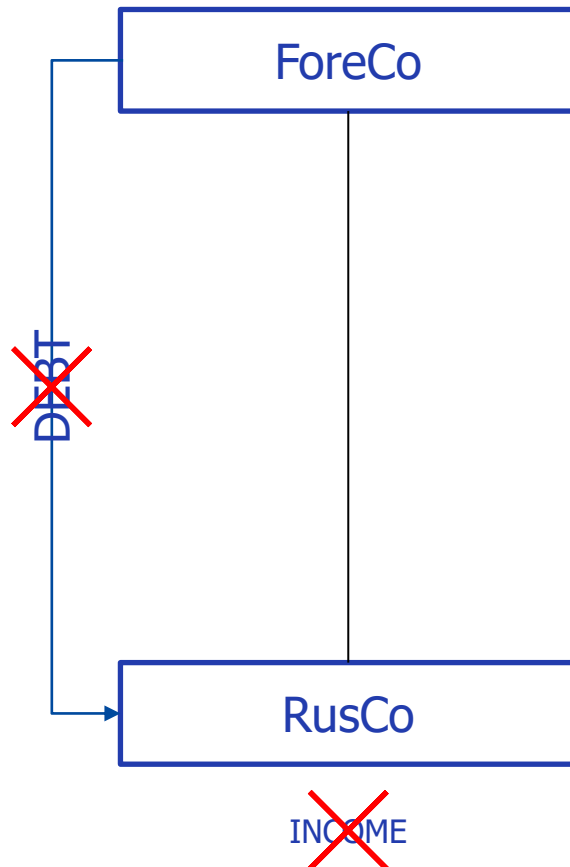
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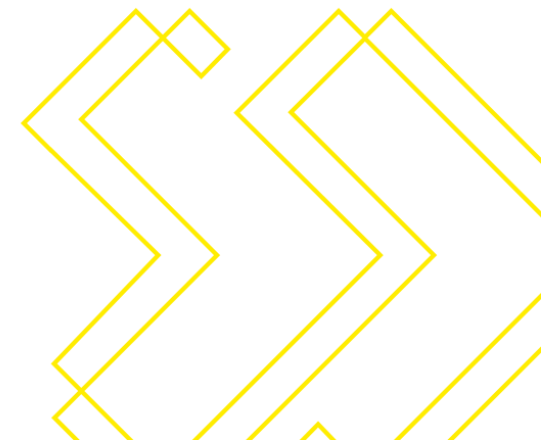


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FORGIVENESS OF DEBT



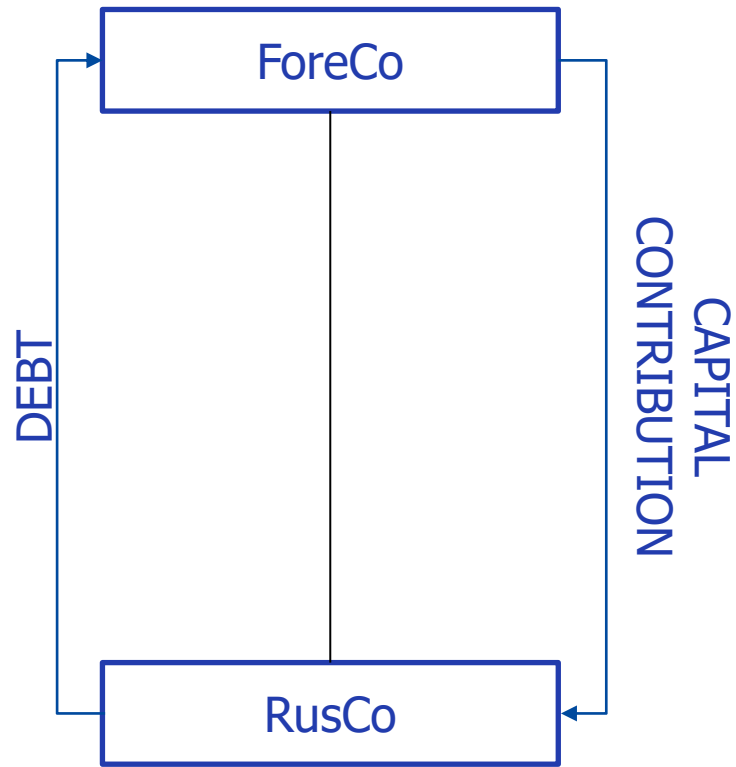
- exemption for debt forgiveness on the basis of foreign shareholder decision (s. 25.1, p. 1, art. 251 of RF Tax Code)
- applicable for loans provided before 01.03.2022
- risk of non-deductable interest



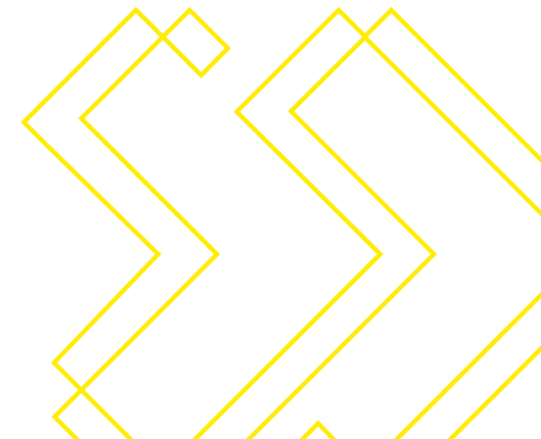


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CONVERSION OF DEBT INTO



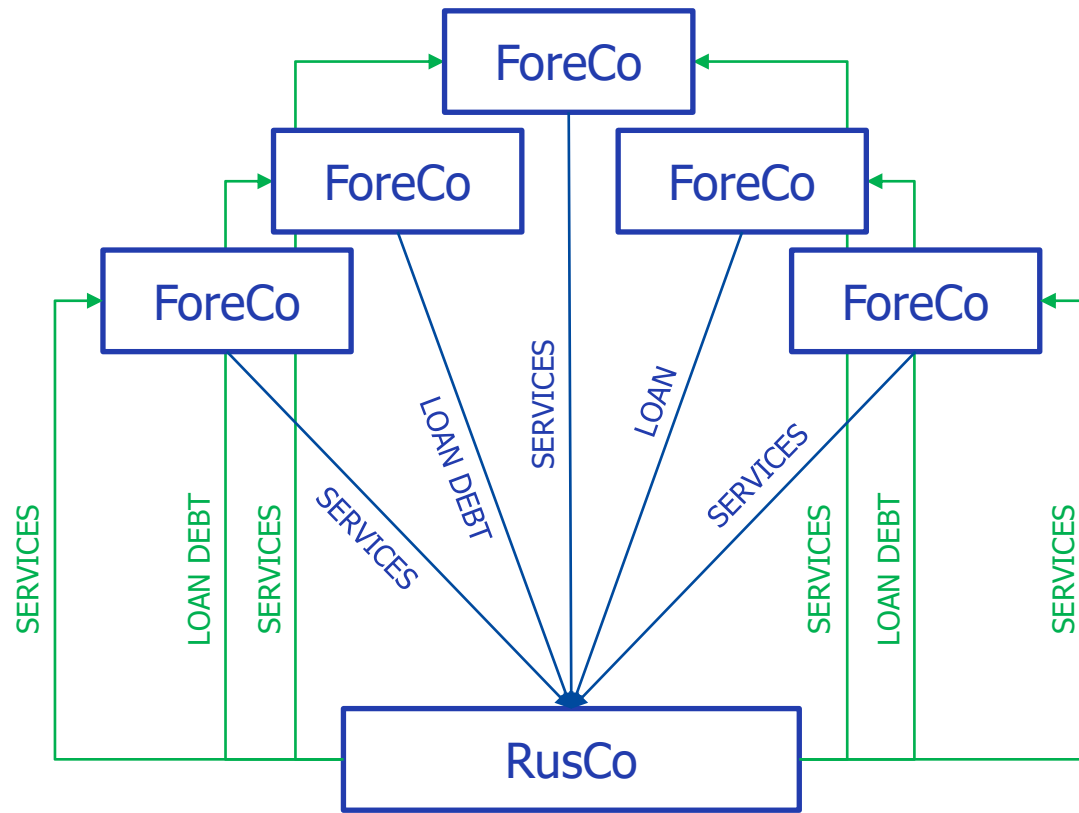
- debt forgiveness risk
- currency control issue for loan debts



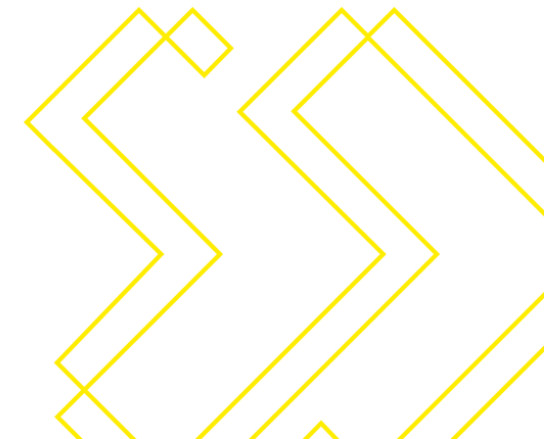


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SET-OFF



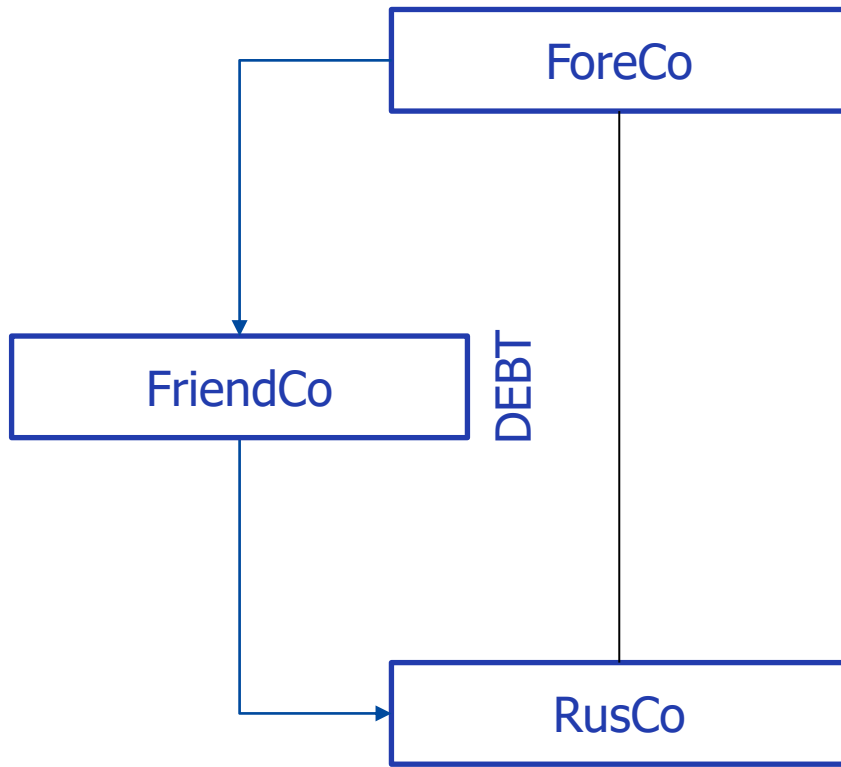
- transfer of debts to 1-2 foreign creditors
- offset of liabilities
- debt forgiveness risk
- currency control issue for loan debts



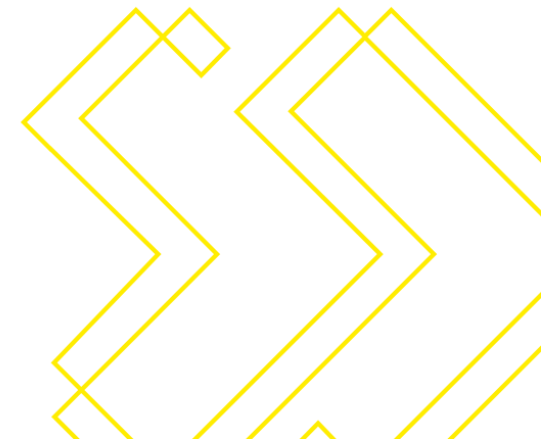


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FUND RAISING



- withholding tax issue
- expenses deduction risk





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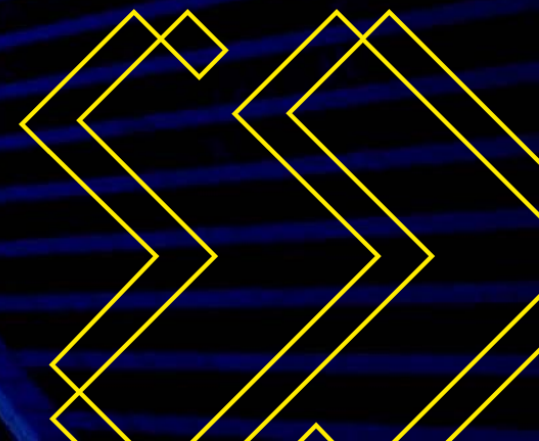


CURRENCY RESTRICTIONS ON LOANS, DIVIDENDS, ROYALTIES AND OTHER PAYMENTS: WHAT AND HOW YOU CAN DO

Vasily Ermolin, ADVANT Beiten



July 6 , 2022





SPECIAL ECONOMIC MEASURES

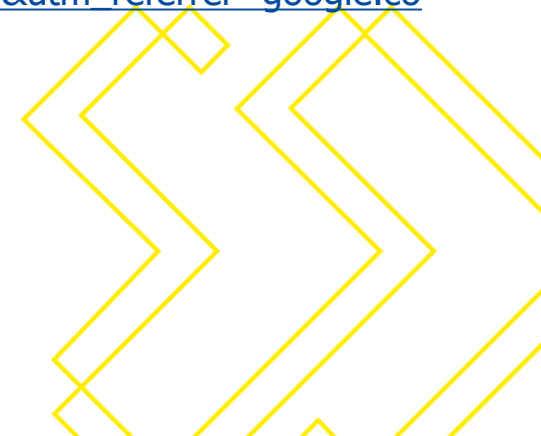
The prohibition of financial transactions or imposition of restrictions on their performance as well as prohibition of foreign economic transactions or imposition of restrictions on their performance are kinds of special economic measures in accordance with Federal Law

No. 281-FZ dated 30 December 2006 "On Special Economic Measures and Coercive Measures".

The Bank of Russia: "... after the reserves of the Bank of Russia in US dollars and euros had been frozen, Russia essentially applied a mirror measure. ... That is, in response to the freezing of part of Russian reserves, Russia also introduced restrictions on the movement of funds that could be transferred to unfriendly countries for a comparable amount" (https://www.cbr.ru/faq/w_fin_sector/)

The Russian Finance Minister: "...We have a total amount of reserves of about \$640 billion, about \$300 billion of reserves are now in a state in which we cannot use them...."

(https://tass.ru/ekonomika/14055281?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com)





SPECIAL PROCEDURE FOR RESIDENTS FOR PROVISION OF LOANS AND CREDITS

Preventing the outflow of foreign currency in accordance with Decree of the Russian President No. 79 dated 28 February 2022:

- Starting from 1 March 2022, residents are prohibited from transferring funds in foreign currency to non-residents both under newly concluded loan agreements and under loan agreements in force

Restricting the outflow of Russian currency in accordance with Decree of the Russian President No. 81 dated 1 March 2022:

- Ban on the provision of new loans and borrowings in roubles to persons of foreign states committing unfriendly actions and persons under their control

Exception:

- A subcommittee of the Government Commission for the Control of Foreign Investments in the Russian Federation, chaired by the Minister of Finance (hereinafter the "Government Commission"), has the right to issue permits exempting from the prohibition.

Exceptions:

- As an exception, Russian banks are permitted to give new credits to Russian residents controlled by foreign persons from the "unfriendly" states, if these borrowers perform manufacturing and commercial activities in Russia and the borrowed sums will be used for the purposes of such activities.
- The Government Commission has the right to issue permits exempting from the restriction.



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SPECIAL PROCEDURE FOR RESIDENTS FOR FULFILLMENT OF OBLIGATIONS UNDER CREDITS, LOANS AND FINANCIAL INSTRUMENTS

Preventing the outflow of foreign currency as well as Russian currency in accordance with Decree of the Russian President No. 95 dated 5 March 2022 – The special procedure is applicable to:

(1) the repayment of debts by Russian residents (regardless of currency) pursuant to:

- loans and credits;
- financial instruments, including shares in joint-stock companies;
- independent guarantees and sureties securing obligations under these loans / credits / financial instruments;

(2) to creditors from the “unfriendly” states and persons under their control OR to Russian residents or “friendly” non-residents if they received claims from “unfriendly” creditors after 1 March 2022 (except for new creditors from Belarus);

(3) when the total amount of debt obligations before **all** “unfriendly” creditors per calendar month exceeds RUB 10 million (or its equivalent in foreign currency).

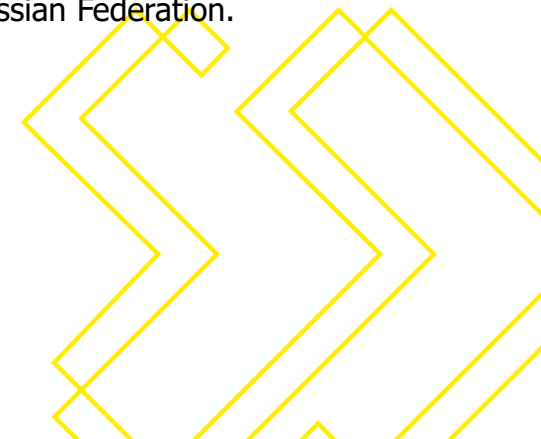
If triggered – all payments shall be made only in Russian roubles and exclusively to special type “S” accounts at the Russian banks, irrespective of amounts owed to specific creditors. The money at the special accounts is *de facto* **blocked** and can be used only for specifically listed purposes.

The limitation applies cumulative to:

- the principal amount of the debt and interest;
- commission on the provided credit line;
- dividends, coupons (interest) on securities, including Eurobonds.

Exceptions:

- The Bank of Russia with regard to credit institutions or non-bank financial institutions and the Ministry of Finance with regard to all other residents are authorized to issue permits on the fulfillment of obligations without using a special type “S” accounts. The resident shall provide a justification, in particular consequences of refusal to grant a permit for the debtor and for the economic development of the corresponding municipality or the Russian Federation.





SPECIAL PROCEDURE FOR RESIDENTS FOR PAYMENT OF DIVIDENDS

Preventing the outflow of foreign currency as well as Russian currency in accordance with Decrees of the Russian President No. 254 dated 4 May 2022 and No. 95 dated 5 March 2022 :

(1) Dividends paid on the shares in the charter capital of Russian limited liability companies (*ООО*) as well as Russian partnerships and production cooperatives **are subject to the same special procedure** as repayment under loans, credits and financial instruments (Decree of the Russian President No. 95 dated 5 March 2022). Conditions:

- to be paid to the foreign shareholders from the “unfriendly” states or shareholders under control of such persons;
- the total amount of dividends to be distributed among the “unfriendly” shareholders exceeds RUB 10 million (or its equivalent in foreign currency) per calendar month.

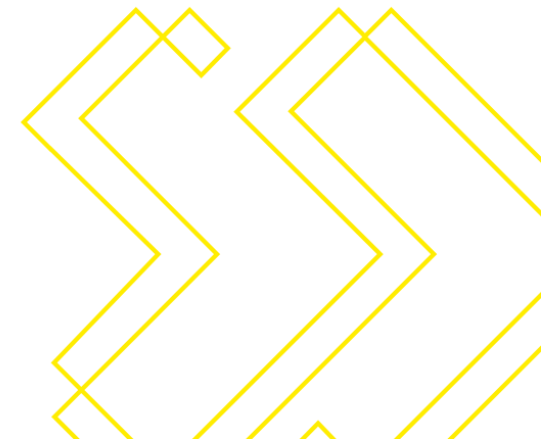
(2) Dividends paid on the shares in joint-stock companies are subject to the special procedure as payments under financial instruments.

(3) The Russian legal entity **shall first waive the moratorium on bankruptcy** imposed by the Russian Government by publication of the notice on waiver in the Unified Federal Register of Information on Bankruptcy (<https://bankrot.fedresurs.ru/>).

(4) If dividends on the shares in a joint-stock company are to be paid by the depository operating in the Russian stock market, they shall be paid pursuant to the special procedure **regardless of the total amount of dividends to be distributed** among the “unfriendly” creditors in a calendar month (*Resolution of the Board of Directors of the Bank of Russia dated 10 June 2022*).

Exceptions:

- The Bank of Russia with regard to credit institutions or non-bank financial institutions and the Ministry of Finance with regard to all other residents are authorized to issue permits on the fulfillment of obligations without using a special type “S” accounts. The resident shall provide a justification, in particular consequences of refusal to grant a permit for the debtor and for the economic development of the municipality or the Russian Federation.



DECREE OF THE RUSSIAN PRESIDENT DATED 27TH OF MAY 2022 No. 322

Payment of royalties for intellectual property rights to specific holders is subject **to generally the same special procedure** as payments of dividends and debt under loans / credits / financial instruments. There are, however, significant differences:

1. **particular criteria for “unfriendly” right holders.** “Unfriendly” holders are:

- holders from the “unfriendly” states who do not properly fulfil their obligations under contracts with Russian debtors;
- holders who publicly supported or advocated for sanctions against Russia;
- holders who stopped providing their intellectual property rights, goods, works and (or) services in Russia after 23 February 2022 without economic reasons;
- holders who publicly discredited the activities of the Russian Armed Forces or government bodies abroad or disseminated defamatory information about Russia;

2. **no threshold in amounts.** The only exceptions are:

- a) payments for intellectual property rights intended for personal use only;
- b) royalties for intellectual property rights necessary for communication services, creation / use of the software and databases in Russia and import to / production in Russia of drugs, medical equipment, food, industrial and agricultural goods.





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MONEY TRANSFERS, SECURITIES / REAL ESTATE, ADVANCE PAYMENTS

Until 30 September 2022 legal entities incorporated in countries that support sanctions cannot transfer money from their accounts at Russian banks to accounts abroad. Individuals from these countries are enabled to transfer from their Russian bank accounts to foreign bank accounts exclusively their salaries and wages (<https://cbr.ru/press/event/?id=12929>).

Transactions implying the transfer of title to securities or real property, which involve a person from the “unfriendly” state as a party thereto, generally require a license. The same applies to transactions with persons from the “friendly” states who acquired the securities / real property from the “unfriendly” person after 22 February 2022 (*Decree of the Russian President No. 81 dated 1 March 2022*). There is a number of specific exclusions from this restriction.

Advance payments or prepayments for works, services, information or rights to intellectual property provided by foreign individuals and companies to Russian businesses cannot exceed 30% of the total sum of obligations under contracts. Certain services are excluded from the scope (*Resolutions of the Board of Directors of the Bank of Russia dated 1 and 15th April 2022*).



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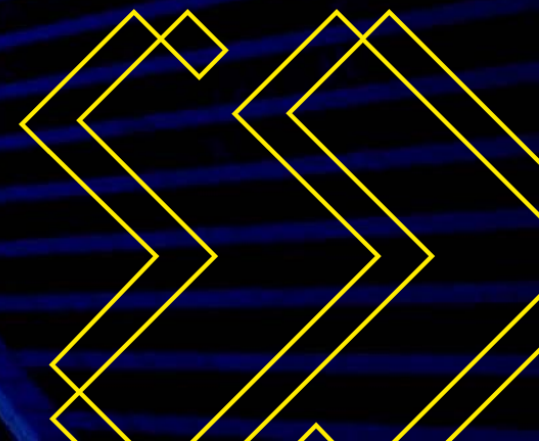


TAX CRIMES – ADOPTED AND UPCOMING CHANGES IN LEGISLATION

Alexander Erasov, MEF



July 6, 2022





July 06 , 2022

NEW CRIMINAL PROSECUTION ORDER



p. 1 Art. 1 of the Federal Law from March 09, 2022 No. 51-Φ3 (Art. 140 of the Criminal Procedure Code)

The reason for initiating a criminal case for crimes under Articles 198 - 199.2 of the Criminal Code are **only the materials that are sent by the tax authorities in accordance with the tax legislation** to address the issue of initiation of criminal proceedings



p. 3 Art. 32 of the Tax Code

Tax authorities are **obliged to send materials to law enforcement agencies** to address the issue of initiation of criminal proceedings **in the case of non-payment of taxes based on the results of the audit**



p. 3 Art. 82 of the Tax Code

Tax authorities **inform law enforcement agencies** about the materials they have on violations of tax legislation, ongoing inspections, etc.



July 06 , 2022

FURTHER DECRIMINALISATION BY THE PRESIDENT'S INSTRUCTION

1

The President's Instruction
from April 26, 2022

2

The Ministry of Justice **drafted a bill** on
amendments to the Criminal Code and
the Code of Criminal Procedure

3

On June 1, 2022 the draft bill was
passed for expertise

Proposal:

Full payment of tax arrears, penalties and
fines to be **the new grounds for refusal** to
initiate or terminate criminal proceedings

Proposal:

Reduce the maximum term of imprisonment
for tax crimes from **6 to 5 years**





July 06 , 2022

CRIMINALISATION: FALSIFICATION OF ACCOUNTING STATEMENTS / ILLEGAL VAT REFUND

Draft Bill on Amendments to the Criminal Code and the Criminal Procedure Code No. 89802-8

1

Art. 173.3 of the Criminal Code

“Falsification of accounting (tax) reporting documents”

2

Art. 159.7 of the Criminal Code

“Tax Fraud”





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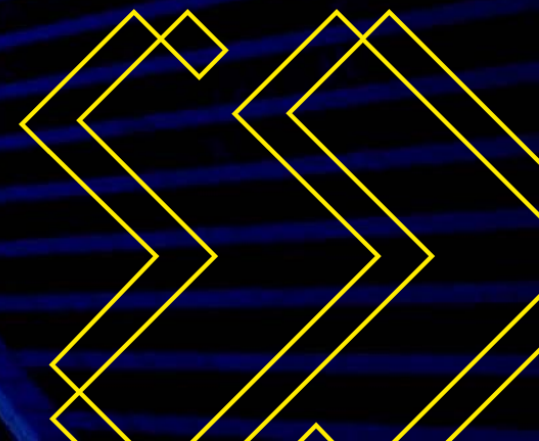


KEY TAX COURT CASES

Raisa Alexakhina, Technologies of Trust



July 6, 2022



INTERPRETATION OF THE PROVISIONS ON EQUITY PARTICIPATION

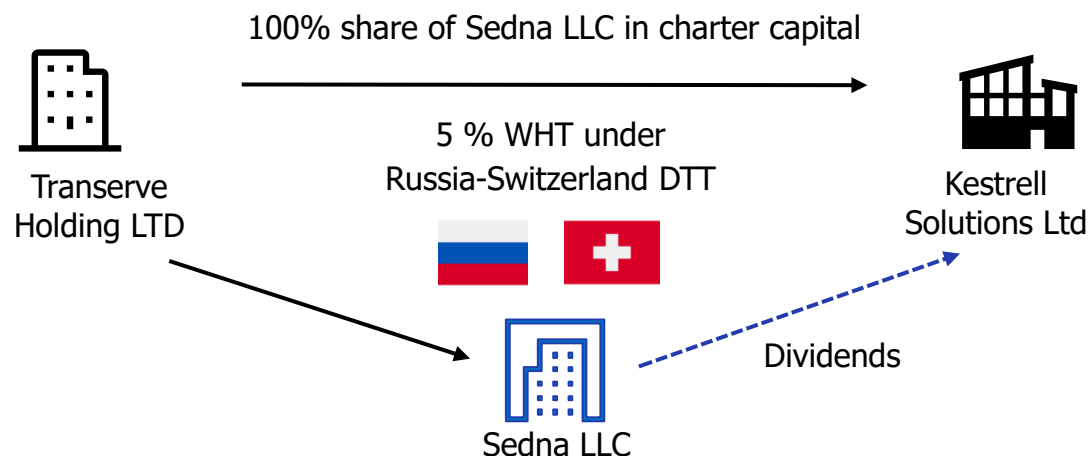


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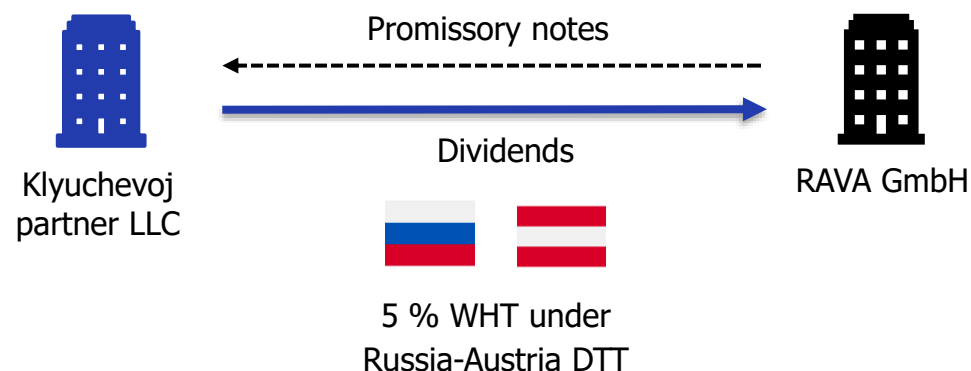
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COURT CASE No. A32-11712/2021 (SEDNA LLC) (-)



- The OECD Commentaries shall be used for the interpretation of international tax agreements (double taxation treaties);
- Under the OECD Comments, the term "capital" should be understood in the same way as in corporate legislation. This term is used in relation to the taxation of dividends, i.e. the distribution of profits to shareholders;
- The term "invested foreign capital" implies the deposing of appropriate amounts into the charter capital of the company. In this regard the terms "capital" and "invested foreign capital" should be interpreted in correlation to each other.

COURT CASE No. A40-33865/2021 (KLYUCHEVOJ PARTNER LLC) (-)



- Since non-repayable financial aid does not increase the charter capital of the company, it cannot be considered for the purposes of the preferential tax rate application under the DTT as well as the company's net assets;
- Loan can be considered as a contribution to the charter capital only if the income from such loan shall be considered as dividends based on law or practice;
- The transfer of promissory notes cannot evidence the provision of investment since the company has transferred only the right of claim on the promissory note obligation.

DECREE OF THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION AS OF MARCH 4, 2021 NO. 5-P



6 July, 2022



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CONTESTED PROVISION OF LAW: PARA. 1 OF ART. 159 OF THE CRIMINAL CODE OF THE RUSSIAN FEDERATION

Position of the Constitutional Court of the Russian Federation

By itself, the unjustified taxpayer's claim for a property tax deduction addressed to the tax authority cannot be considered as constituting sufficient public danger for criminalisation and it does not indicate the presence of taxpayer's intent to commit fraud, since the provision of a tax deduction in such situation shall be prevented by the actions of the tax inspectors, who are entitled to decide (based on the results of a desk tax audit) on the actual amount of a person's tax liability for a particular tax period.

Tax authority



taxpayer's claim for
a property tax
deduction



Kalugarov V. V.

Military mortgage

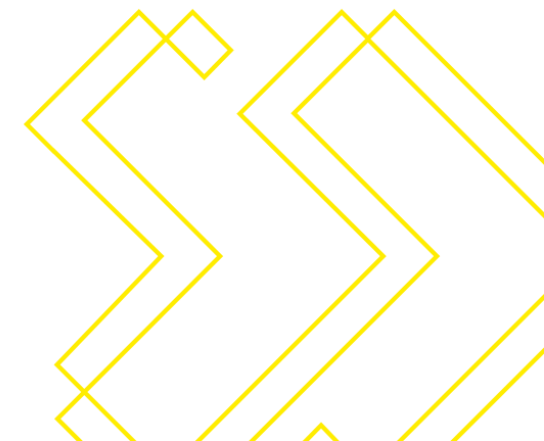


Credit organisation



Court

Art. 159 of the Criminal Code of
the Russian Federation

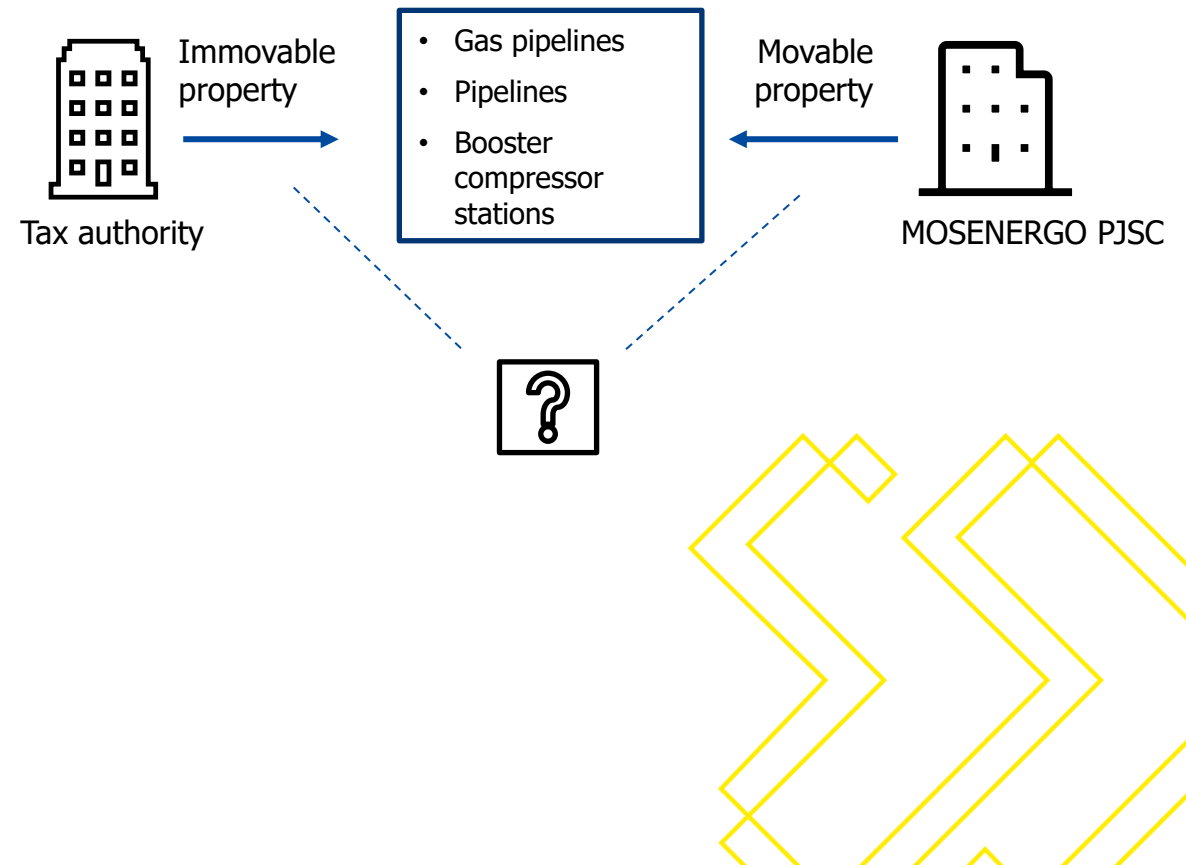




6 July , 2022

COURT CASE No. A40-111087/21-116-690 (MOSENERGO PJSC) (+)

- The use of constructions in a single technological process and the economic infeasibility of moving them shall not be considered as signs of a strong connection with the land and as a ground for the recognition of such objects as immovable property;
- Even the recognition of the company's objects as a single immovable complex ("SIC") does not entail the obligation to pay property tax on movable objects, because all objects included in the SIC are accounted as separate inventory objects;
- The criteria of civil law for qualifying property as movable or immovable shall be used for the purposes of property taxation with consideration of the purposes of the property tax exemption;
- Although the production facility is complex, this does not mean that the taxpayer's exemption cannot be applied to particular inventory facilities included in the production complex (facility);
- The key requirement for qualifying a set of objects as a SIC is the owner's will to consider such set of objects as a single thing (which can be confirmed by an entry in the United State Register of Immovable Property).





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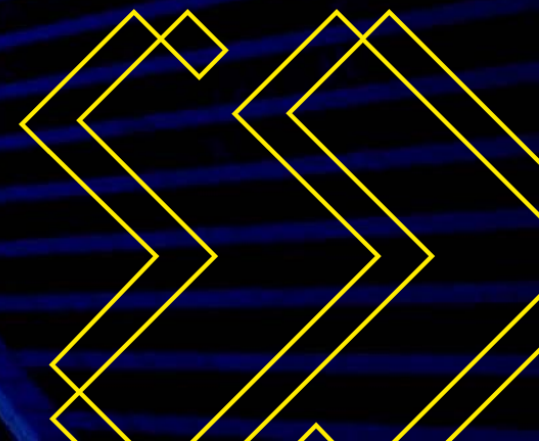


PROBLEMS OF INCLUDING ROYALTIES AND "AGENCY" VAT ON ROYALTIES IN THE CUSTOMS VALUE: CUSTOMS AND TAX ASPECTS

Inna Elisanova, B1



July 6, 2022



PROBLEMS OF INCLUDING ROYALTIES AND "AGENCY" VAT ON ROYALTIES IN THE CUSTOMS VALUE: CUSTOMS AND TAX ASPECTS

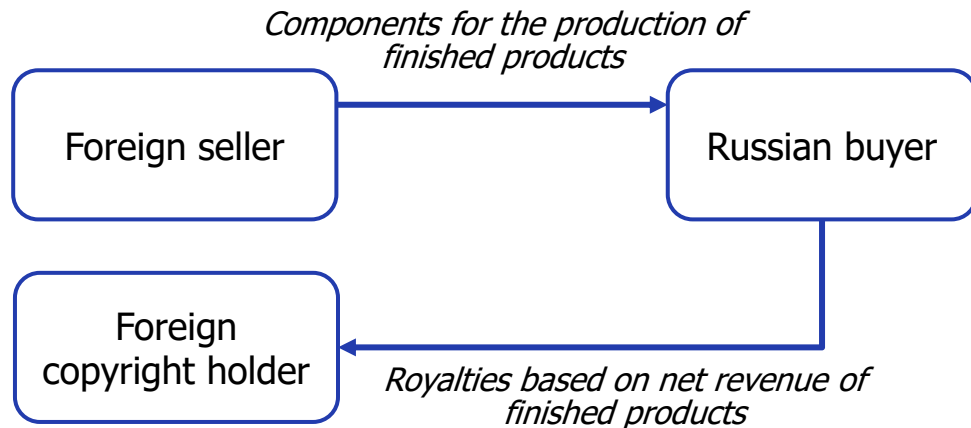


July 06, 2022



Association of European Businesses

INCLUSION OF ROYALTIES IN THE CUSTOMS VALUE OF IMPORTED RAW MATERIALS AND COMPONENTS



Court practice: manufacturing companies (2020-2022)

Additional questions for analysis:

- 1) Can the imported component be identified in the finished product?
- 2) Can royalties be allocated from special financial arrangements between buyer and seller?
- 3) Do imported components undergo deep processing?
- 4) Are locally purchased components used in production of the finished product?

Negative	
A57-33493/2020	A43-3620/2022
A55-32746/2020	A56-14498/2022
A50-23041/2020	A40-11337/2022
A68-2882/2020	A56-11606/2022
A55-17363/2021	A55-877/2021
A60-29202/2021	A70-6626/2021
Positive	
A43-24570/2020	A09-11913/2021
A43-12164/2020	A43-25411/2020

PROBLEMS OF INCLUDING ROYALTIES AND "AGENCY" VAT ON ROYALTIES IN THE CUSTOMS VALUE: CUSTOMS AND TAX ASPECTS

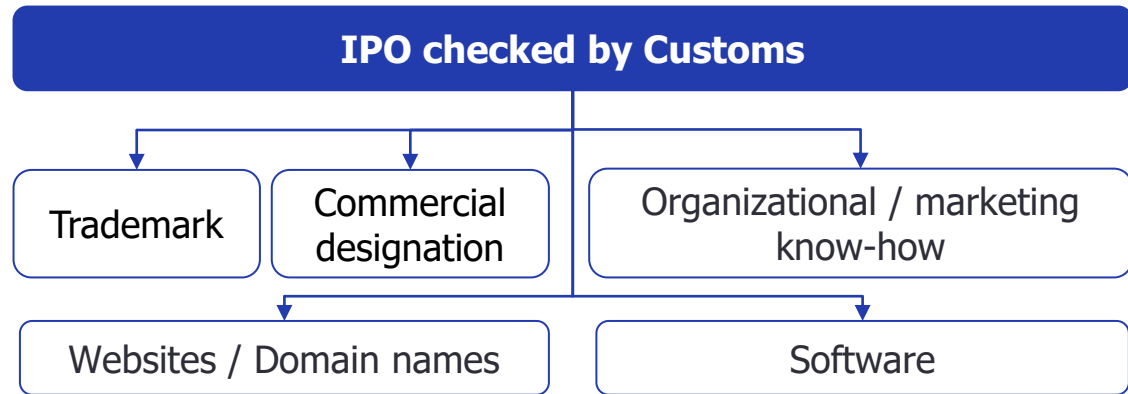


July 06, 2022



Association of European Businesses

CUSTOMS INSPECTIONS OF RETAIL COMPANIES' LICENSING STRUCTURES



Requests from customs authorities

- ✓ A standard package of documents that relates to licensing legal relations and the supply of goods
- ✓ A list of documentation, as well as other information provided to the licensee for the exercise of its rights to the IPO
- ✓ Does the company carry out activities other than the sale of imported goods? If so, what share of the company's revenue does such activity make up?
- ✓ Data on the movement of imported goods / reports on their sale
- ✓ Calculation of the formation of net profit from the sale of imported goods (in the context of the nomenclature of goods and each customs declaration)



Court practice: retail companies (2020-2022)

Negative	
A56-11606/2022	A08-804/2022
Positive	
A40-162670/2020	A40-213505/2020
A09-1751/2021	A09-1129/2021
A40-171763/2021	A56-114310/2021
A40-4727/2022	A40-281305/21

PROBLEMS OF INCLUDING ROYALTIES AND "AGENCY" VAT ON ROYALTIES IN THE CUSTOMS VALUE: CUSTOMS AND TAX ASPECTS

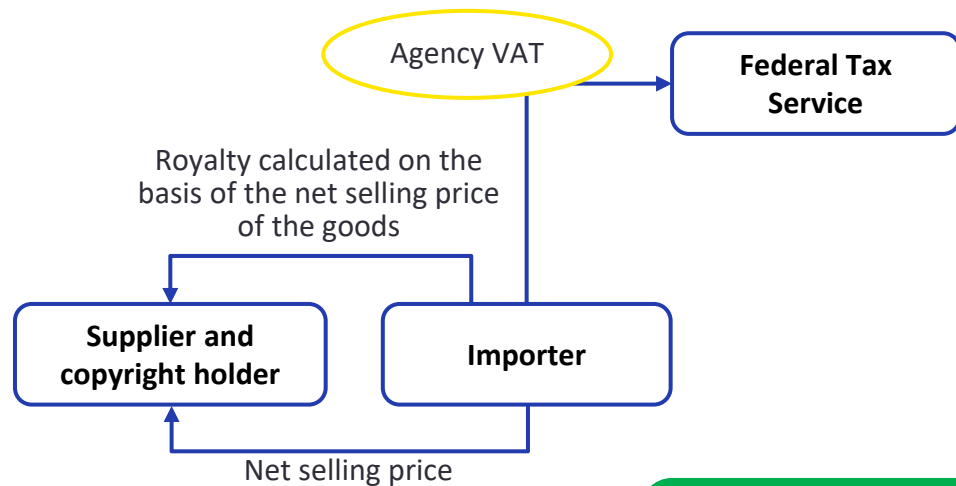


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July 06, 2022

INCLUSION OF AGENCY VAT IN THE CUSTOMS VALUE OF IMPORTED GOODS



A56114310/2021
A40-3225/2022
A40-286907/2021

Court practice

A40-251204/2021
A56-90354/2021 and
A56-90356/2021

Recommended opinion 4.16



The amount of royalties should be added to the customs value of the goods, taking into account the amount of **"special tax on income"** (special income tax) from royalties.

Letter of the Ministry of Finance of Russia dated 04.08.2016 № 03-10-11/45719



The amount of royalties must be added to the customs value of the goods, taking into account the amounts of **VAT withheld from royalties**.

Recommended opinion 4.18



The amount of **"royalty income tax"** (tax on income (profit) from royalties) must be added to the customs value of the goods/ **"non-resident income tax"** (non-resident income tax) from royalties.

Letter of the Ministry of Finance of Russia dated 13.10.2021 № 27-01-21/82729



The amount of royalties must be added to the customs value of the goods, taking into account the amounts of **VAT withheld from royalties**.



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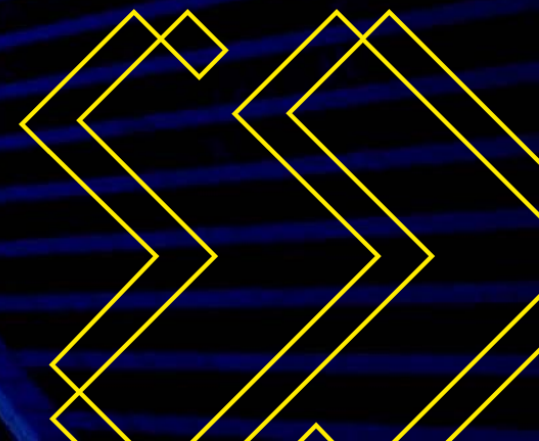


VAT REGIME FOR FOREIGN ESS PROVIDERS: CHALLENGES OF 2022

Arseny Seidov, Baker McKenzie



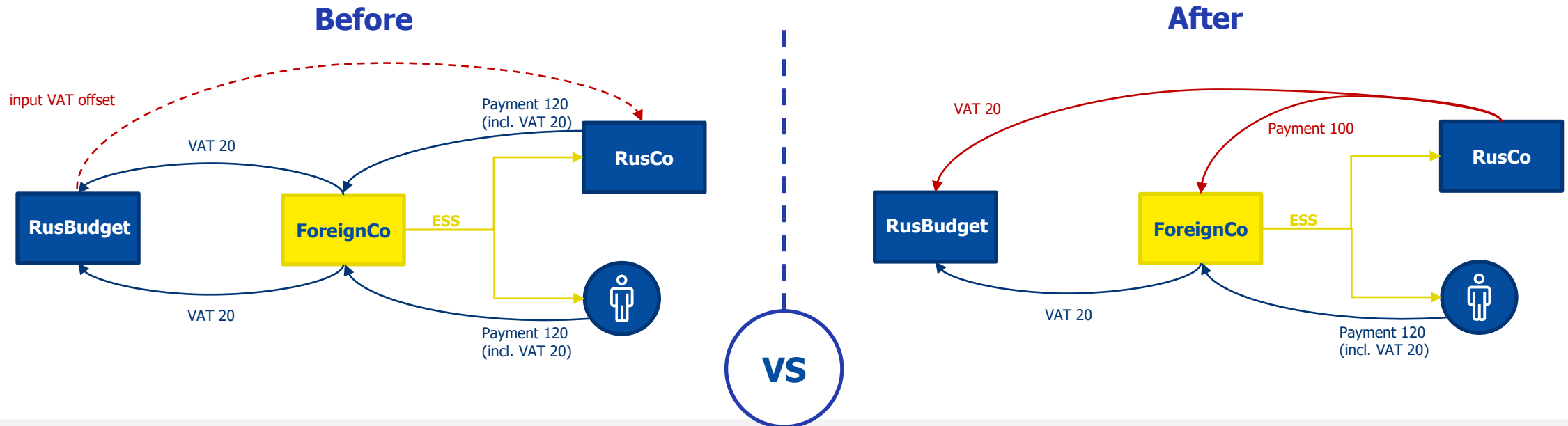
July 6, 2022





July 6, 2022

DRAFT LAW NO. 136059-8 – NEW VAT REGIME ON ESS



- ForeignCo **is registered** with the Russian tax authorities under Art. 83(4.6) of the Russian Tax Code
- ForeignCo must remit VAT to the Russian budget on ESS fees received from **both companies and individuals**
- RusCo may offset input VAT paid to ForeignCo

- ForeignCo **is registered** with the Russian tax authorities under Art. 83 (4.6) of the Russian Tax Code
- ForeignCo must remit VAT to the Russian budget on service fees received from **individuals**
- RusCo acts as a tax agent** and must withhold VAT and remit it the Russian budget (as currently recommended by the FTS in the Letter No. SD-4-3/3807@, dated March 30, 2022)



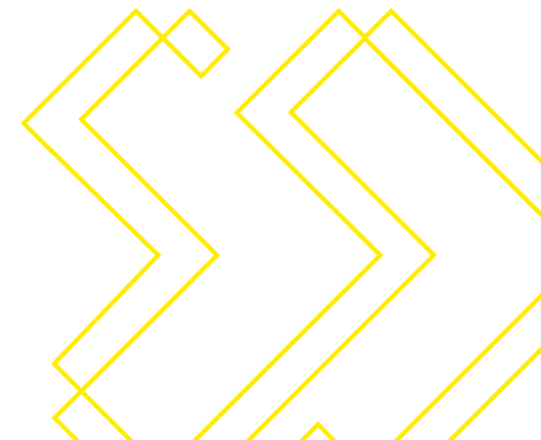
July 6, 2022

DRAFT LAW NO. 136059-8 – NEW VAT REGIME ON ESS

Key Challenges

- **Mandatory registration with Russian tax authorities**
No procedure for deregistration of B2B ESS vendors
- **Treatment of already collected ESS fees**
No transitional provisions on offsetting input VAT paid to the foreign ESS vendors under the current rules
- **Handling returns of advance payments in the absence of future collections**
Obtaining a VAT refund for a foreign ESS vendor is nearly impossible in practice

Expected entry into force – October 1, 2022





July 6, 2022

CURRENT VAT REGIME ON ESS – COMPLIANCE OPTIONS

Payment procedure

Even if not restricted under anti-crisis regulations, banks are reluctant to process cash transactions between Russian and foreign residents and especially payments to the Russian budget

Russian cash collection agent

A foreign ESS provider may appoint a Russian entity of the group/unrelated party as an intermediary cash collection agent, which would collect, report and remit VAT paid by Russian customers



Payment via a Russian entity as a "third-party representative"

Any Russian person may remit VAT for the foreign ESS vendor:

- no underlying documents required;
- ESS vendor must submit VAT reporting and would be liable for failure to pay on the part of a third party



Opening a Russian bank account by the foreign ESS vendor

A foreign ESS vendor may open a Ruble account with a "neutral" Russian bank and credit the VAT portion from the payment received from Russian customers to the local bank account. Additional tax registration entailed.



Russian customers acting as quasi-tax agents

Russian customers may voluntarily self-assess VAT on ESS purchases from the foreign ESS provider and the latter would not be required to pay VAT that was already remitted by the Russian customer

