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Open event organized by the AEB Taxation Committee

RUSSIAN TAX SYSTEM IN THE FIRST SIX MONTHS OF 2021: KEY NEWS



July 8, 2021

Tadzio Schilling

**Association of European
Businesses, CEO**

OPENING REMARKS



Moderators

Alina Lavrentieva

Chairperson of the AEB Taxation Committee, EY

Andrey Wakar

Deputy Chairperson of the AEB Taxation Committee, IKEA

MODERATION



Programme

10:00 – 12:00 SESSION 1

- G7 states: new digital tax.
- EAEU: changes to the rules of indirect taxation – good news?
- The first six months of 2021 in Russia: main changes in tax legislation.
- Denunciation of the double taxation treaty with the Netherlands – what's next?
- Taxation court cases overview – key decisions.
- Inclusion of various payments into customs value of goods – new twist.

12:15 – 14:00 SESSION 2

- Tax monitoring: practical dialogue.
- Intragroup relations: shareholder activities or services? Expert discussion.



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G7 states: new digital tax



Mikhail Filinov

Partner, International Tax co-Leader in
Central & Eastern Europe, PwC

Timeline



2022

MLI for Pillar I, Pillar II in some countries, EU Directives

2023

Implementation in EU, Pillar I works



Pillar I (Economists)

SCOPE

MNC turnover:
EUR 20 bln (then EUR 10 bln)

Extractive and regulated financial
excluded

CHARGE

Sales in a market:
EUR 1 mln

Sales in small markets (GDP < 40 bln):
EUR 250k

20-30% of profits
above 10% margin

DST?

DST kept for those who
did not sign MLI

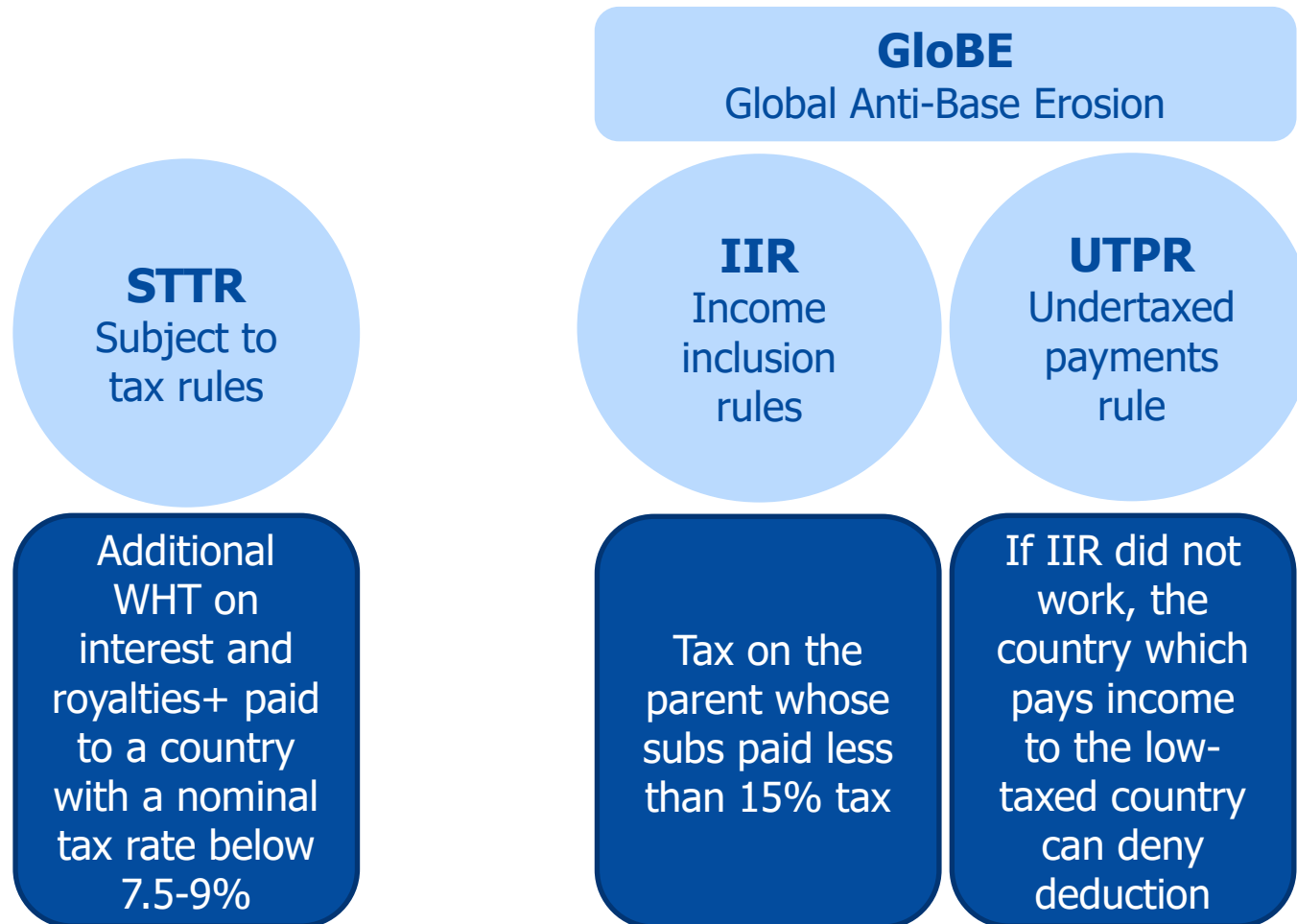
DST Cancelled

EU Digital levy

What does *coordination*
mean?



Pillar II (Lawyers)





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EEC: changes to the rules of indirect taxation – good news?



Ekaterina Lakatosh

Tax Team Leader, SCHNEIDER GROUP

PROTOCOL ABOUT THE CHANGES OF THE AGREEMENT ABOUT THE EAEU

Main goals:

1. Introduction of the rules related to VAT taxation on electronic services
2. Update of the rules regarding definition of place of services rendering

Status:

The protocol was approved by the College of the Eurasian Economic Commission



PLACE OF SERVICES RENDERING

Changes in the rules of definition of place of services rendering :

- Recipient of services is physical person
- Services: consulting, legal, accounting, auditing, engineering, advertising, designing, marketing, data processing, R&D
- Place is defined based on the place of the registration of the service provider

Foreign company is not obliged to pay VAT in case it is registered due to

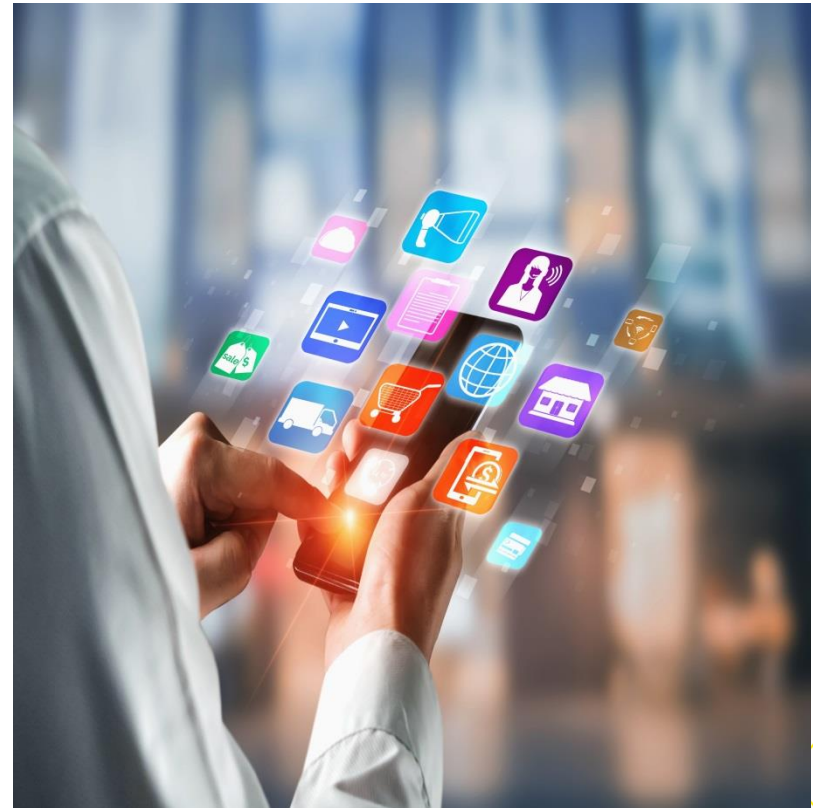
- Opening of a bank account
- Owning real estate in Russia
- Owning means of transportation
- Has registered a representative office that doesn't not participate in services rendering

VAT is paid by the buyer as a tax agent.

ELECTRONIC SERVICES

Main points:

- Definition of the term “electronic services”
- Rules of definition of place of services rendering and place of buyer’s location
- Tax base definition and rules for VAT payment
- VAT registration for service providers





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The first six months of 2021 in Russia: main changes in tax legislation



Nina Goulis
Partner, Corporate Tax,
KPMG in Russia and the CIS

Corporate profits tax

✓ Tax loss carryforwards

- ✓ The current 50% limitation on loss carryforwards for corporate profits tax purposes will remain in effect until December 31, 2024 (the current limitation is until December 31, 2021).

✓ Fixed assets

- ✓ The initial cost of fixed assets in cases of completion / retrofit / reconstruction / modernization / technical re-equipment / partial liquidation / and other similar grounds, changes **regardless of the amount of the residual value of fixed assets;**
- ✓ If the reconstruction, modernization or technical re-equipment of an item of fixed assets has not **increased its useful life, the taxpayer applies the rate of depreciation determined by the initially established for this fixed asset useful life.**

✓ Research and Development (R&D)

- ✓ The list of R&D expenses is to be supplemented by expenses for acquisition of exclusive rights to results of intellectual activity (inventions, utility models, industrial designs, selection achievements, programs for computers and databases, topologies of integrated circuits) under a contract of alienation, as well as expenses for acquisition of rights to use such results of intellectual activity under a license agreement **in case the mentioned rights are used exclusively in scientific research and (or) experimental and design developments.**

✓ Charter capital

- ✓ If the decrease in charter capital was due to the amount of charter capital exceeding the amount of net assets, such a decrease **is not recognized as income for corporate profits tax purposes.** This change applies to legal relations arising from January 1, 2021.

Corporate profits tax

✓ Limit values of interest rates on loans for corporate income tax purposes

- ✓ Due to the global reform of interest rate indicators, amendments were made to part one of Article 269 of the Tax Code, under which **the €STR, SONIA, SARON, TONAR, SOFR rates will be used instead of EURIBOR, LIBOR** to calculate the limits of interest income / expense on foreign currency loans, depending on the currency of the loan.

✓ Investment tax deduction

- ✓ The constituent entities of the Russian Federation are vested with additional rights with regard to the establishment of the investment tax deduction, including the right to establish **the possibility of applying the investment tax deduction also in respect of fixed assets of depreciation groups 8-10.**

✓ Compensation transferred to the budget

- ✓ Established that expenses in the form of damage compensation payments transferred to the budget / state non-budgetary funds **are not deductible for corporate profits tax purposes.**

✓ Reduced corporate profits tax rates

- ✓ The constituent entities of the Russian Federation have the right to establish reduced corporate profits tax rates payable to regional budgets **for taxpayers carrying out activities to provide under a license agreement the rights to use the results of intellectual activity**, the exclusive rights to which belong to the taxpayer and are registered with the Federal Service for Intellectual Property.



Taxation of foreign companies

- ✓ Taxable income of foreign companies from sources in the Russian Federation **includes interest on debt obligations of a foreign organization** if the corresponding debt arose in connection with the activities of a permanent establishment of the foreign organization.

VAT

- ✓ Clarified the procedure for calculating VAT when selling goods / works / services, the place of sale of which is recognized as the Russian Federation, by a foreign company which is registered in the Russian Federation. In particular, it is **established that VAT is calculated by a tax agent and not by a foreign company** in cases:
 - ✓ A foreign company is registered for tax purposes at the location of the separate subdivision and such separate subdivision does not sell goods / works / services;
 - ✓ A foreign company is registered for tax purposes in connection with its immovable property and vehicles in the territory of the Russian Federation;
 - ✓ A foreign company is registered for tax purposes in connection with the opening of a bank account.
- ✓ This change will take effect on October 1, 2021.



Federal Law No. 305-FZ of 02.07.2021 "On Amending Part One and Part Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" was published on 02.07.2021.

Most changes will be effective from January 1, 2022 (unless otherwise is specifically mentioned).



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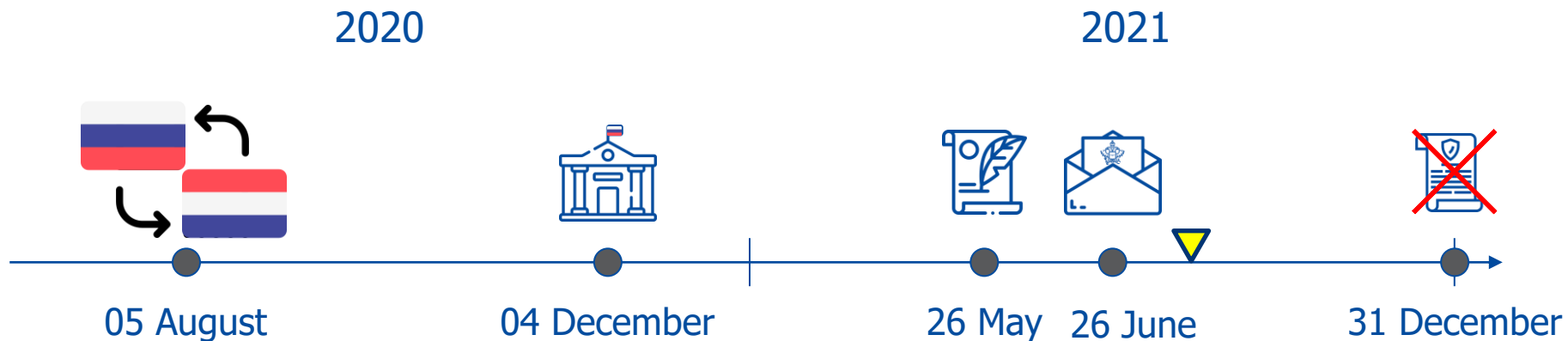


Denunciation of the double taxation treaty with the Netherlands – what's next?



Andrey Grachev
Counsel, Head of Tax Practice,
Eversheds Sutherland

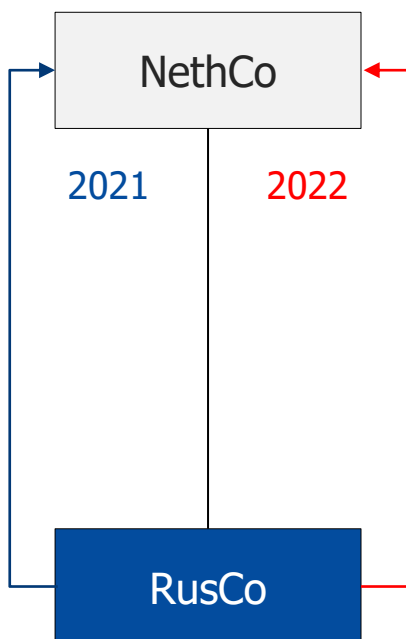
BACKGROUND



- Relevant amendments to the agreements have been developed and proposed to Netherlands.
- Russian Ministry of Finance reported that several rounds of negotiations with the Netherlands did not result successfully.
- Law to denounce DTT with the Netherlands has been signed.
- Russian Ministry of Foreign Affairs has notified the Dutch side of the adoption of the relevant law by a note completing all the procedural requirements.



AFTER 2021



	2021	2022
Dividends	5%	15%
Interests	0%	20%
Royalties	0%	20%
Intragroup services	-	-



TENDENCIES AND CHALLENGES



High attention of Russian tax authorities to payments in 2021.



Applying of look-through approach. When to start?



Potential changes to the Russian Tax Code in order to support companies affected by denunciation.





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Taxation court cases overview – key decisions



Dmitry Kirillov
Senior Associate, Advocate
Tax Practice, BCLP



Intragroup IP

Case No. A33-5437/2020 – Johnson Matthey Catalysts LLC (-)

- Royalties of the Russian company to the UK company (0% WHT) have been requalified into dividends (15% WHT).
- The court: if a know-how is not a secret for the licensee at the date of the license agreement, it has no value (!).
- License for know-how with the retroactive effect – high risk.

Case No. A40-180523/20 – OTIS Elevator LLC (+)

- The company has defended its right to deduct royalties for usage of OTIS trademark.
- Evidence provided: the brand book, pictures of employees wearing the branded uniform, pictures showing the OTIS trademark appearing in the course of elevator service activities.
- The courts rejected the tax authority's argument that the taxpayer must prove the unmatched superiority over its competitors gained by the usage of OTIS trademark.

Tax audit procedures

Case No. A32-48817/2018 – KhimProm LLC (+)

- The company has successfully challenged the penalty for failure to provide ca. 13 thousand document items during the field tax audit.
- Instead of provision of documents the company granted to tax officers the access to the entire document storage, as well as to its 1C accounting database.
- The court: in absence of the detailed list of requested documents the penalty is unlawful.

Case No. A40-162676/20-140-3080 – KomStrin LLC (+)

- The company underwent the field tax audit in the years 2015-2016, whereas the tax authority's decision resulting the audit was issued only in 2019.
- The court: there are about four years between these dates, all this time the taxpayer suffered an uncertainty of its legal status.
- The court also referred to the Constitutional Court Resolution No. 14-P dated 16 July 2004 – excessive tax control procedures and suppression of business independence are inadmissible.

Court practice overview by Supreme Court of Russia No. 2 dated 30 June 2021

Case No. A40-123840/2019 – De Lage Landen Leasing LLC (+)

- Thin capitalization - the leasing company has successfully challenged the profits tax charges for usage of the capitalization ratio 12,5 (instead of regular 3) on interest paid on the loan granted by its Dutch parent company.
- Tax authority: the company runs other businesses apart from leasing.
- The court: business activities that are auxiliary to the leasing do not breach the condition of usage of the 12,5 capitalization ratio.

Case No. A76-2493/2017 – Uralbroiler LLC (-)

- Classic VAT case – chain of suppliers used solely to pump the price, shell companies, lack of proof of supply, etc.
- The court: if the taxpayer has been involved or was aware of the VAT fraud in the chain of suppliers, it is not allowed for the input VAT deduction even if the supply from its direct contracting party was real.
- The court referred both to Article 54.1 of the Russian Tax Code and to the Supreme Arbitration Court Resolution No. 53 dated 12 October 2006.



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Inclusion of various payments into customs value of goods – new twist



Wilhelmina Shavshina

Associate Partner, Customs Regulation and
Global Trade Services Leader in the CIS, EY
Chairperson of Customs and Transport
Committee, AEB



Latest Trends in Customs Control

WHEN?

Post-clearance
control

FOR WHAT PERIOD?

3 years

MONITORING WHOM?
Conscientious participants
in foreign economic activity
of a low risk category

GOAL?

High efficiency while
reducing the number of
checks

NEW APPROACH?

Inter-agency
cooperation between
FCS and FTS

In the first quarter of 2021, based on the results of customs control after the release of goods, additional funds were charged in the amount of about **2.5 billion rubles** (in the first quarter of 2020 - 5.3 billion rubles), over **1.14 billion rubles** were recovered to the federal budget (in Q1 2020 - 481 million rubles).

Measures to confirm customs value

Providing a full package of documents
and information confirming the declared value

If it is not possible to provide documents and information,
it is necessary to provide detailed reasons why

Using test values

TEST VALUES which are determined by calculation :

- the value of a transaction with identical or similar goods when sold by **unrelated parties**;
- the customs value of identical or similar goods by using the **Subtraction value method** (deduction of the amounts of remuneration of third parties, expenses for transportation and insurance, amounts of customs duties, taxes and fees);
- the customs value of identical or similar goods by using the **Computed value method** (adding the cost of materials, components etc. manufacturing costs, profit and general expenses and transport etc.).

Inclusion of various payments into customs value of goods

Customs valuation

- 1 Royalties
- 2 Dividends
- 3 Transport deductions
- 4 Intragroup charges
- 5 Charges for value-adding services

Risks

1. Charging of additional customs payments.
2. Charging of penalties on the amount of indebtedness.
3. Imposition of administrative sanctions.
4. Bringing of criminal proceedings.
5. Imposition of criminal sanctions.
6. Change of risk category.

NEW TWIST

New court case

The court included into the customs value the payments for process development services based on the fact that imported equipment has already contained a technological process for the manufacture of a piece of equipment.

NEW TWIST

The Arbitration Court issued a **negative** ruling for the company on the issue of unjustified re-qualification of royalties for the use of intellectual property objects into dividends.

Potential solution

Amendments to the customs value of imported goods in terms of excluding the amounts of such "license fees" and reimbursement of overpaid customs payments, if they were included in the customs value of goods.

NEW TWIST

The Arbitration Court issued a **negative** ruling for the company on the procedure for determining the customs value of imported goods, which determines the practice of assessing transfer pricing policies in the presence of a relationship between the parties to the transaction.

Consequences

The precedent is created for confirming the impact of conditions or obligations on the sale of goods and their price, the impact of which on the price of goods cannot be quantified, through an assessment of the transfer pricing method applied.

Inclusion of various payments into customs value of goods

Royalties: Increased control of the customs authority for following areas

- simultaneous observance of 3 conditions of inclusion in the customs value of license fees for IPO;
- when importing components and parts;
- know-how related to the implementation of organizational solutions;
- inclusion of withholding taxes on royalties as part of the customs value by Customs.

Risk assessment and preparation of a preliminary defensive position;
Change in the licensing structure;
Appealing the decision of the Customs in court.

Transport deductions: Risk zone

- assignment to the cost of transportation of imported goods on the customs territory of the EEU the costs of the expeditor for the organization of such transportation;
- lack of the established list of documents for confirmation of transport deductions in the legislation;

Dividends: Risk zone

- when the supplier of the goods was a participant (founder) of the Russian importer and directly receives payments in the form of dividends from him.

Risk assessment and preparation of a preliminary defensive position;
Receiving an address clarifications from the EEC;
Appealing the decision of the Customs in court.

Intragroup charges

- Examples of payments that customs may include in the customs value of imported goods:
- services for technical support and management solutions;
 - projecting payments;
 - payments for IT services;
 - compensation for export customs duties;
 - intragroup insurance expenses.

AEB Taxation Committee: results of the first six months of 2021 – overview

Alexander Erasov

Deputy Chairperson of the AEB Taxation Committee, BCLP





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Tax monitoring: practical dialogue



Svetlana Khramova

Deputy Head of the Interregional
Inspectorate for the Largest Taxpayers N1

Questions from the businesses

1. Общие вопросы по развитию режима НМ и нормативной базы

- Планируется ли освобождение от проверок трансфертного ценообразования в рамках дальнейшего развития налогового мониторинга?
- Какие нововведения ожидать участникам мониторинга в 2022, 2023 г., в частности:
 - Когда будут опубликованы и вступят в силу новые версии Приказов ФНС по информационному взаимодействию (сейчас – Приказ 323) и Рискам/СВК (сейчас – Приказ 509) и какие дополнительные изменения по сравнению с опубликованными версиями стоит ожидать?
 - Расскажите про предварительные результаты пилотных проектов ФНС по автоматизации информационного взаимодействия, создания SAF-T файла и требований к СВК и опыт налогоплательщиков МРИ №1.
 - Когда следует ожидать новых требований по автоматизации информационного взаимодействия?
 - Какие другие ключевые изменения планируется внести в критерии для участников и законодательство по НМ?
- Возможно ли «закрыть» открытые налоговые периоды для налоговой проверки при переходе на налоговый мониторинг? При каких условиях и что для этого необходимо сделать?

Questions from the businesses

2. Мотивированные мнения налогового органа

- Планируется ли изменение процесса подготовки и согласования мотивированных мнений налогового органа в ближайшее время? Если да – как изменится процесс и роль МРИ / ФНС при подготовке и согласовании ММ?
- Как долго сейчас занимает получение мотивированного мнения от налогового органа? Как менялась картина по срокам за прошедшие годы?
- Есть ли разница между сроками установленными НК РФ и фактическими сроками для получения мотивированного мнения налогового органа? Какая ответственность предусмотрена НК РФ для налогового органа за «поздний» вынос мотивированного мнения за рамками сроков, установленных НК РФ?
- Сколько мотивированных мнений для участников мониторинга было выпущено МРИ №1 в 2020-2021 гг.?
- Какие категории вопросов рисков подлежат урегулированию через ММ налогового органа? Возможно ли получить ММ налогового органа на наиболее «проблемные» вопросы налогоплательщиков МРИ №1 – налогообложение ВГУ, применение ст. 54.1, и пр.?
- Какое количество ММ может запрашивать налогоплательщик в НМ в год?
- Освобождает ли получение ММ налогоплательщика от штрафов и пени? Какие основания есть для отмены ММ и что происходит в этом случае?
- Какие инструменты существуют, чтобы получить определенность в областях налоговых рисков до вступления в налоговый мониторинг – ведь мотивированное мнение доступно только участникам режима?

Questions from the businesses

3. Построение информационного взаимодействия с налоговым органом

- Видите ли Вы трудности входа в налоговый мониторинг компаний у которых учет построен на базе иностранного ПО (например, SAP, Oracle)? Как Вы планируете этот вопрос решать? Планируете ли работать с иностранными поставщиками, чтобы они имели в наличии модули для упрощения входа в налоговый мониторинг таких налогоплательщиков?
- Как будет работать АИС «Налог-3» и какие планы по ее развитию?
- Если финансовый и бухгалтерский учет ведется с SAP/Oracle/Ахapta, и доступ к ним невозможно организовать из -за требований головного офиса, а налоговый учет ведется в Excel – можно ли зайти в налоговый мониторинг по ТКС и что делать дальше?
- Как будут меняться требования к информационному взаимодействию и нужно ли будет переделывать в 2022-23 гг. витрины данных, которые уже внедрены участниками?
- Каких поставщиков «витрин» вы можете порекомендовать как надежных и удовлетворяющих требованиям ФНС?
- Из-за ограничений по бюджетам/ресурсам возможно ли растянуть ИТ-проект по витрине данных на несколько лет?

4. Отчетность по рискам и СВК

- Как изменятся требования к СВК в 2022 г. и как это будет работать
- Что нужно раскрывать в части налоговых рисков / неопределенных позиций и насколько это обязательно
- При самостоятельном раскрытии налогоплательщиком налоговых рисков – будет ли начисляться штраф и пени?
- Сколько нужно раскрывать рисков/контролей – какое количество является необходимым/достаточным?

Questions from the businesses

5. Взаимодействие с МРИ №1 в ходе налогового мониторинга

- Были ли случаи назначения выездных налоговых проверок МРИ №1 для участников мониторинга в 2020-2021 гг.?
- Какой процент компаний, стоящих на учёте в МРИ №1, уже перешёл на налоговый мониторинг по состоянию на начало 2021 г.?
- Если какие-либо ошибки налогового учета обнаруживаются в ходе налогового мониторинга от каких видов ответственности фактически освобожден налогоплательщик? Штрафы? Пени?
- Были ли в Вашем опыте (либо Вам известно) «выходы» из налогового мониторинга, когда, например, налогоплательщик не согласился с мотивированным мнением налогового органа и отказался его исполнять? Какие последствия для налогоплательщика наступили? Была ли назначена выездная налоговая проверка? За какой период (1 год мониторинга либо 3 предшествующих лет, покрытых мониторингом)?
- По Вашей информации создают ли налогоплательщики новые структурные подразделения (группы, отделы, управления) для сопровождения проекта по налоговому мониторингу (как на этапе входа, так на этапе сопровождения)?
- Какие требования к новым участникам НМ – кого вы хотите видеть в программе и какие минимальные требования / критерии должны выполняться по ИТ/СВК ?





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Intragroup relations: shareholder activities or services? Expert discussion



Ksenia Litvinova, Pepeliaev Group
Maria Kostenko, Baker McKenzie
Tatiana Kofanova, Deloitte

Position of Federal Tax Service (Letter of 12.02.2021 No. ШНО-4-13/1749@)

The main criterion for tax accounting for intra-group services

- Benefit test for the Russian company of MNE group.

Criteria for shareholder activity

- Activities are carried out based on the needs of shareholders.
- The economic benefit from such activities can be traced at the level of MNE as a whole, and not at the level of individual companies.
- Participants of MNE group would not involve third parties for such activities and would not carry out such activities on their own.

What about the overall positive synergies achieved through MNE group?

What if the shareholder criteria is not met?

1. Expenses are not recognized for profits tax purposes.
2. The payment can be qualified as the passive income.



FTS Letter – strategic management

**Shareholder activity**

1. The development of MNE group strategy **as a whole or for individual segments and (or) regions.**
2. Strategic planning and budgeting.

**Tax accounting of expenses ...**

If the function of developing strategy and planning is performed for the benefit of a Russian company of MNE group, in particular:

1. the company receives assistance in defining updated or new strategy (*for example: updated brand strategy for line of products sold in Russia; new digital strategy of company in Russia*);
2. the company receives assistance in the strategic planning and budgeting of its economic activities (*for example: update of 3-year budget for Russia; 2030 MNE group regional strategy*).

FTS Letter – financial accounting and reporting



Shareholder activity

Providing the Russian company of MNE group with the function of preparing **consolidated financial and management** statements.



Tax accounting of expenses ...

If the function of preparing management reporting is performed for the benefit of a Russian company of MNE group, since through management reporting

1. the company receives information about business performance for making current decisions by management;
2. the company receives information to carry out long-term planning;
3. the company can identify inefficient resource allocation (for example, additional savings in costs).



FTS Letter – financing

**Shareholder activity**

Organization of financing for MNE group in terms of interaction with financial institutions on behalf of MNE, obtaining ratings, implementing measures to reduce the cost of financing for MNE, efficient use of free cash within the MNE, ensuring financial security of MNE.

**Tax accounting of expenses ...**

If the function of centralizing financing at the global level is performed for the benefit of a Russian company of MNE group, in particular:

1. the company receives more favorable financing terms (for example, savings on the interest rate);
2. the company can determine the priority areas for the use of available funds;
3. the company receives more favorable terms of financial security (for example, bank guarantees).



FTS Letter – marketing

**Shareholder activity**

Conducting market research, including the study of the conjuncture and characteristics of the markets in which MNE group plans to carry out economic activity, **provided that such research is not connected with projects already being implemented on the market (launching new products on the market, building a new line of business).**

**Tax accounting of expenses ...**

If market research is performed for the benefit of a Russian company of MNE group, in particular:

1. market research is aimed at developing business and increasing the profit of a Russian company;
2. market research is used by a Russian company when making commercial and informed decisions like any independent company.



FTS Letter – standards, methodologies, policies and internal control

**Shareholder activity**

1. Development of standards, methodologies, policies and (or) other internal regulations that apply to MNE group, **with the exception of those that are targeted measurable developments aimed at the development of entrepreneurial activity and the profitability of individual MNE group participants.**

2. Implementation and control over the implementation of such standards, methods, policies and (or) other internal regulations.

**Tax accounting of expenses ...**

If the function of developing and implementing policies is performed for the benefit of a Russian company of MNE group, in particular:

1. the company receives ready-made documents that it would have to develop on its own (for example, a production and labor safety policy, a counterparty verification policy, IT policies, incentive policies, etc.);
2. policies are aimed at improving the efficiency of the company (for example, new automation methodology save time and costs);
3. the company uses these documents in its business;
4. internal audit results help to improve the efficiency and productivity of the company.

FTS Letter – human resources

Shareholder activity

No direct attribution to HR activities.

Usual areas of concern:

- HR strategy;
- HR planning and budgeting;
- HR /Health and Safety policies and manuals;
- HR surveys.

Tax accounting of expenses ...

If the function of developing and implementing policies is performed for the benefit of a Russian company of MNE group, in particular:

1. new HR retention strategy helped to decrease turnover of personnel;
2. updated budgeting tool helped to increase efficiency of HR department;
3. health and safety manual helped to decrease the number of incidents in production sites;
4. HR survey helped to increase employees' satisfaction rate.

CLOSING REMARKS

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Taxation Committee, BCLP**

