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Open event organized by the AEB Taxation Committee

ANNUAL CONFERENCE OF THE AEB TAXATION COMMITTEE



December 16, 2021

Tadzio Schilling

**CEO Association of European
Businesses**

OPENING REMARKS



Yulia Shepeleva

Deputy Head of FTS Russia



Alina Lavrentieva

**Chairperson of the AEB Taxation
Committee, EY**

MODERATION



Program

10:00 – 11:45 SESSION 1

- BEPS 2.0 – global tax reform consequences for Russia. Expert discussion.
 - Pillar 1 и Pillar 2 – main parameters in the view of recent discussions
 - Is tax competition in the international arena gone?
 - Implementation issues in Russia: retention of tax incentives, double taxation risks, administration, etc.
- Amending international tax treaties – quo vadis?

12:00 – 14:00 SESSION 2

- Tax benefits and investment: current practice and issues. Expert discussion.
 - Agreements on protection and stimulation of investments
 - Special investment contracts
 - Regional investment projects
 - Investment tax deduction
- Localization of accounting databases: new requirements.
- Tax control outside tax audits: useful tips.





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BEPS 2.0 – Global tax reform consequences for Russia. Expert discussion.



December 16, 2021

Leonid Shilin,
Head of AEOL Division
FTS Russia

Mikhail Filinov,
Partner,
PwC

Vladimir Elizarov,
Partner,
Deloitte





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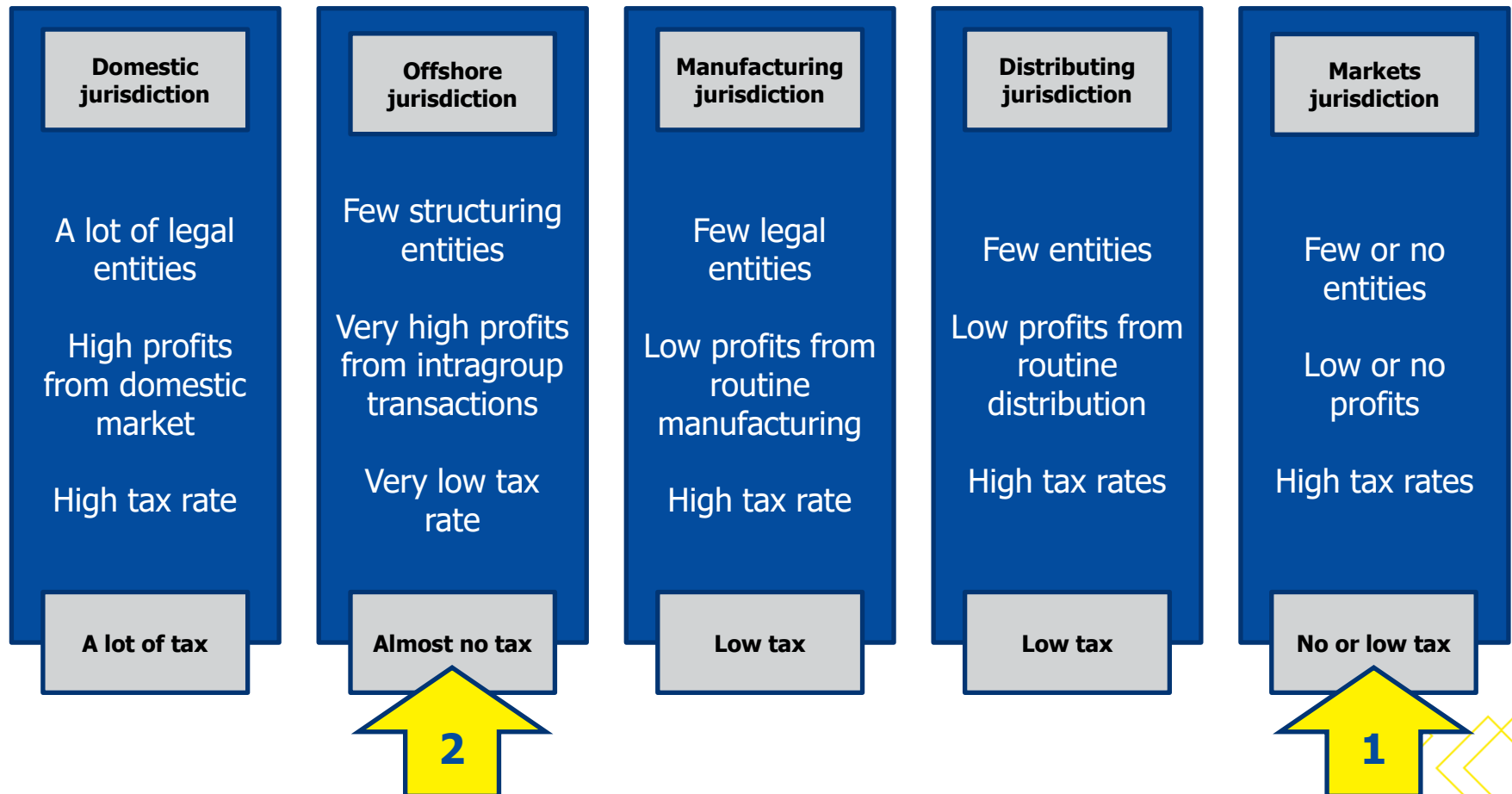
Pillars: how do they work?

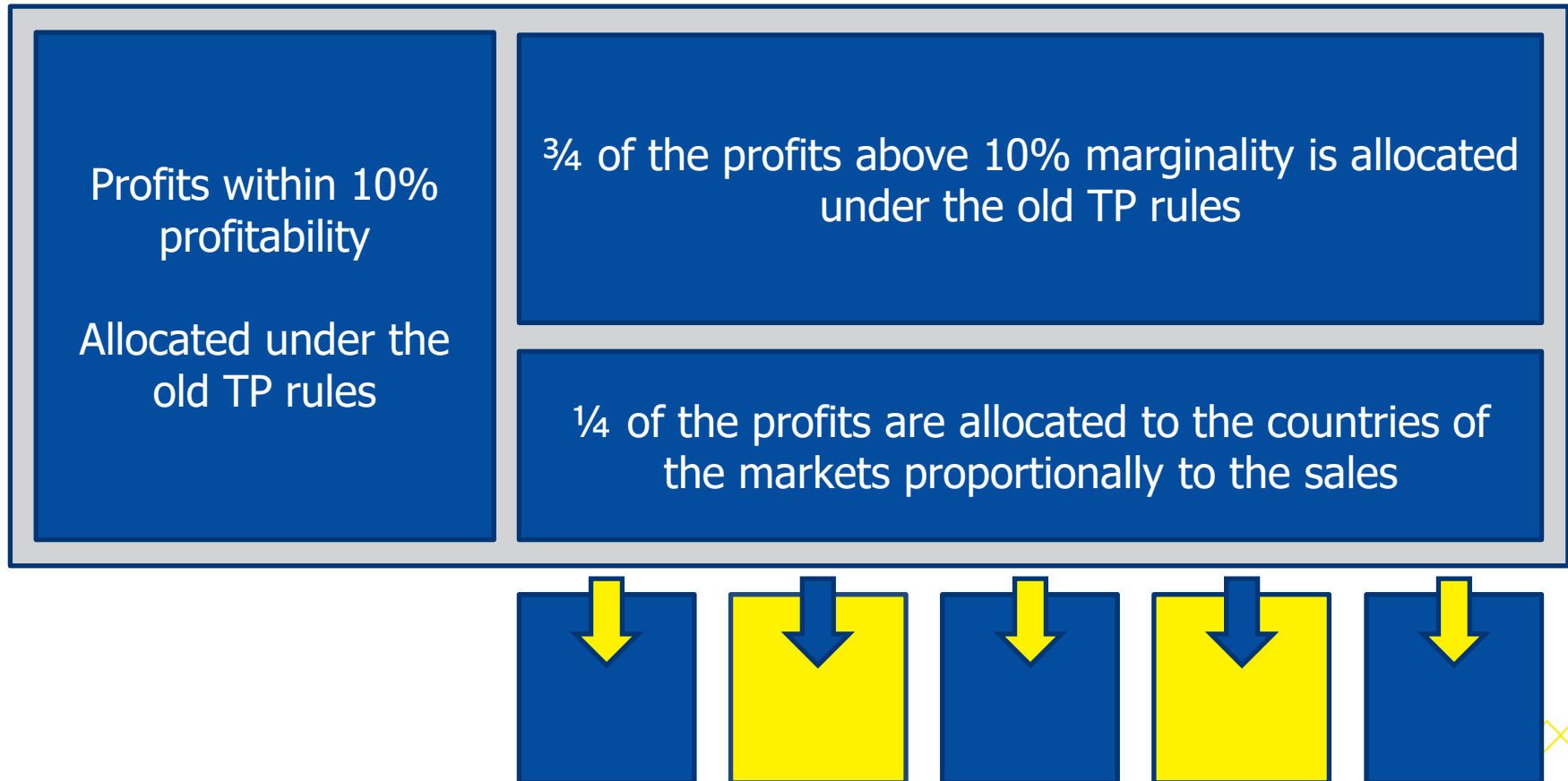


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Mikhail Filinov,
Partner,
PwC

Origins of BEPS II



Pillar 1: above 20 billion Euro per year

Pillar 2: above 750 million Euro per year

Top holding company of a group

2. GloBE: Income inclusion rule

Head office country can introduce a CFC-like rule to top up the tax rate on its subsidiaries to 15%. Credit if given to a proper return on assets and labour and to the STTR tax:

$$(85 - 10 \cdot 10\% - 50 \cdot 8\%) \cdot 15\% - 9 = 3$$

Offshore

100	Royalty income
(10)	Salary
(5)	Amortisation
85	Profits
0	Tax

50 Assets

Royalty
100

Profitable company in a developing country

1. STTR: Subject to tax rule

MLI will let up to 9% WHT:
 $100 \cdot 9\% - 0 = 9$

3. GloBE: Undertaxed Payments Rule

1000	Revenues
(100)	Royalty
(750)	Cost
150	Profits
(30)	Tax



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Is tax competition gone?



December 16, 2021

Vladimir Elizarov,
Partner,
Deloitte

Tax support measures in the context of Pillar 2

Pillar 2 - additional tax to the foreign tax authorities based on RusCo profit

ForeignCO



RusCo with effective tax rate less than 15%

IT relief, Skolkovo, Special economic zone, Investment deduction, Regional investment project, Special investment contract, etc.

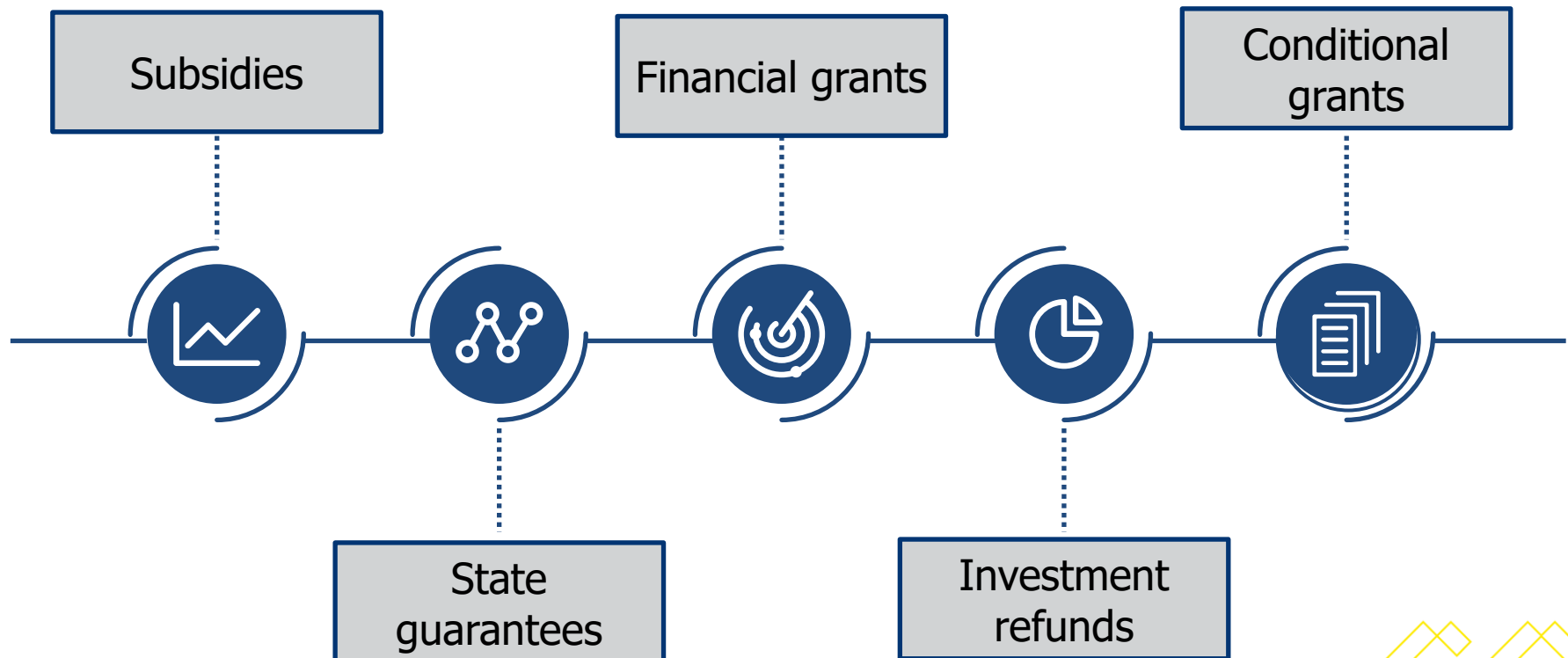
Effective tax rate is calculated on a country level, i.e. it is blended

Carve-outs - % of payroll and the carrying value of tangibles

Opportunity to compensate additional profit tax with other tax relieves (for example, property tax)

Open question - will Russia increase the preferential profit tax rates to 15%?

NON-tax support measures in the context of Pillar 2





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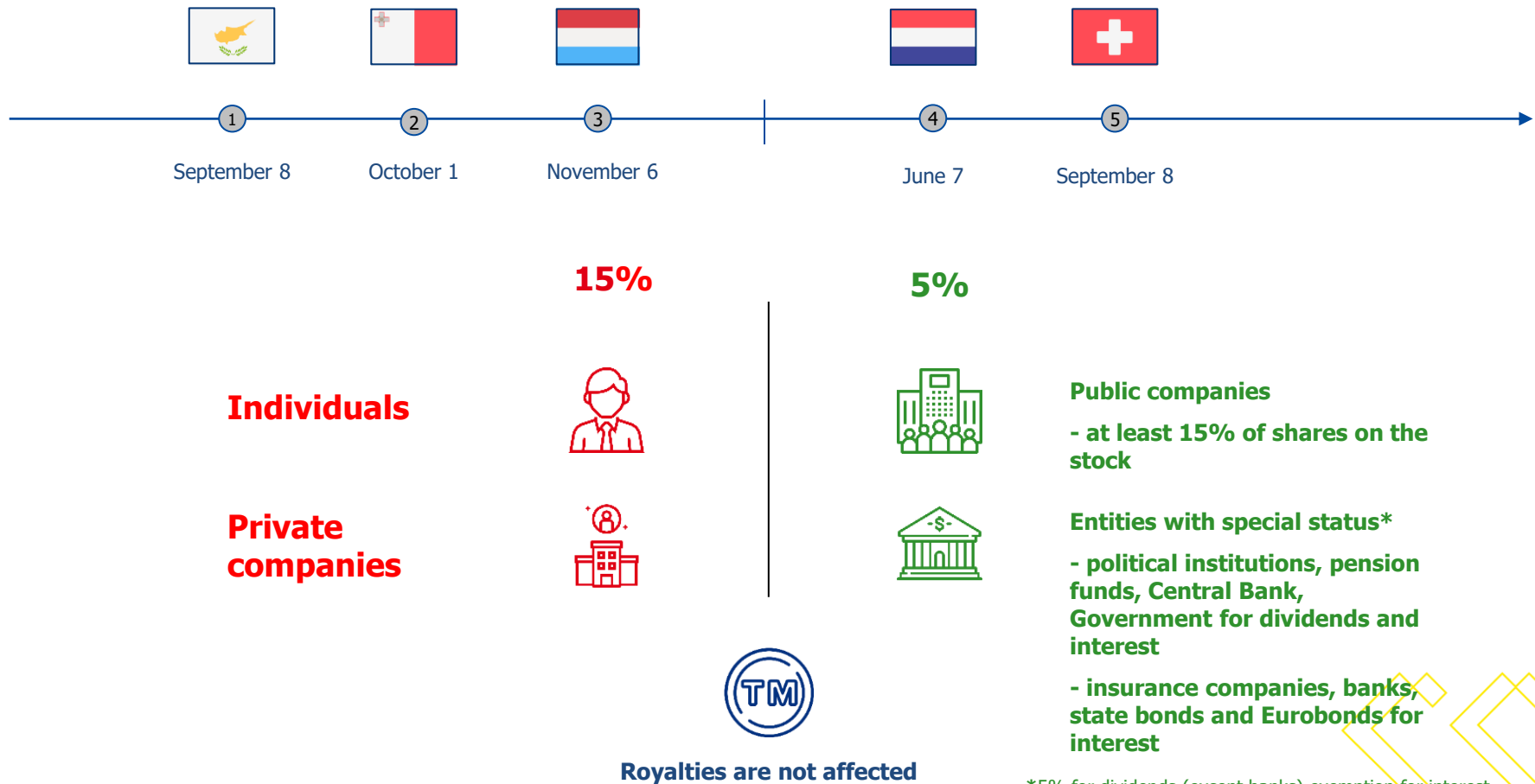
Amending international tax treaties – quo vadis?



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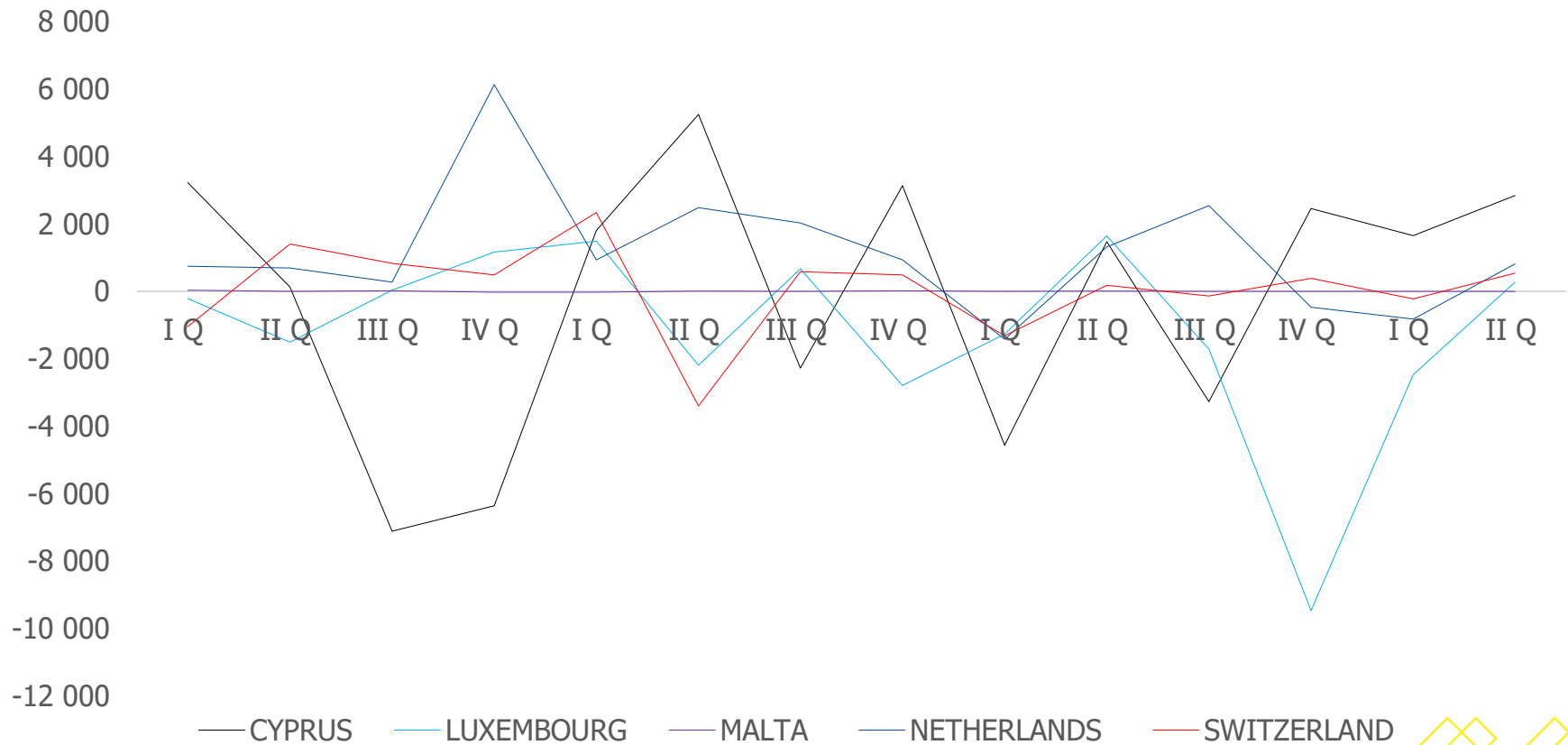
Andrey Grachev,
Counsel, Head of Tax Practice
Eversheds Sutherland

Changes in Russian DTT

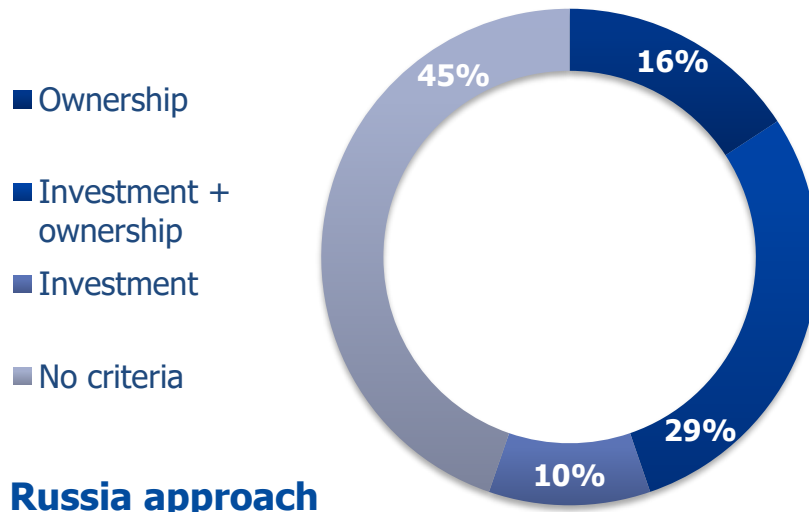


*5% for dividends (except banks) exemption for interest

Investment balance with the Russian Federation



Analyses of investment and ownership criteria in Russian DTT with European countries



Russia approach

| Purpose: ensure that Russian businesses pay a minimum level of tax regardless in which jurisdictions their shareholders are headquartered (except strategic partners)

| Tools:

- | 15% tax rate without investment and ownership criteria
- | Special categories of income recipients eligible for 5% tax rate

MLI

| Purpose: To tighten access to benefits under the DTT

| Tools:

- | LOB
- | PPT
- | Criterion of Ownership (365 days)

Pillar 2

| Purpose: ensure that large internationally operating businesses pay a minimum level of tax regardless of where they are headquartered or the jurisdictions they operate in

| Tools:

- | Income inclusion rule (15%)
- | Undertaxed payments rule
- | Subject to tax rule



AEB Taxation Committee Facts & Figures – Overview 2021

Andrey Wakar

Deputy Chairperson of the AEB Taxation Committee, IKEA





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Tax benefits and investment: current practice and issues



December 16, 2021

Sergey Semenov
Partner
Taxology

Anton Nikiforov
Partner
Pepeliaev Group

Andrey Sulin
Partner
EY

Nina Goulis
Partner
KPMG



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> >> Investment tax deduction



December 16, 2021

Sergey Semenov
Partner
Taxology

Investment tax deduction (ITD)

ITD entitles taxpayers to decrease a *corporate income tax* by the amounts of investments made

Expenses for the creation, acquisition and change of the initial cost of fixed assets of 3-10 depreciation groups (except for buildings, constructions, transfer devices of 8-10 depreciation groups)

The regional part of the tax is reduced by 90% of expenses incurred

The federal part of the tax is reduced by 10% of expenses incurred

ITD peculiarities

- the minimum estimated rate to the regional budget is 5%, the deduction for the federal budget is not limited
- the decision on application of the ITD should be reflected in the accounting policy

- possible to transfer the unused part of the ITD for the following periods (except for: the federal infrastructure; the regions limiting such possibilities)

Possible limitations in the regions

- types of expenses qualifying for the ITD
- categories of taxpayers qualifying (not qualifying) for ITD
- categories of fixed assets in relation to which taxpayers are provided (not provided) ITD
- limits on donation expenditures taken into account when determining the ITD



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Regional investment project



December 16, 2021

Anton Nikiforov
Partner
Pepeliaev Group

A Regional Investment Project. General information

- ✓ Legislation in the constituent entity of the Russian Federation
- ✓ It is prohibited to have standalone units in other constituent entities of the Russian Federation (there are some exceptions)
- ✓ It is prohibited to invest in oil, gas, excisable goods and so on
- ✓ The amount of investments should be at least RUB 50 million
- ✓ The capital investments should be assessed at market prices
- ✓ The participants in the investment project should be either included in the register or not



A Regional Investment Project. General information

Tax benefits

- ✓ Corporate profit tax
- ✓ Property tax
- ✓ Mineral extraction tax



A Regional Investment Project. What to pay attention to

- ☑ **Risks involving having standalone units and the spinning off of a separate company**
- ☑ **Capital investments including the costs on the liquidation of brownfield projects**

The Resolution of the State Commercial Court for the Moscow Circuit dated 14 March 2019 in case № A40-132412/2017 (Severstal)

- ☑ **A corporate profit tax benefit before revenues are received from the sale of goods**

Ruling № 306-KG17-9355 of the Panel of Judges for Economic Disputes of the Russian Supreme Court dated 2 November 2017

A Regional Investment Project. What to pay attention to

- ☑ **Model challenges of 90%**
- ☑ **Upgrading a production facility: the issues of applying tax benefits**

The Russian Finance Ministry's Letter № 03-03-06/1/17747
dated 21 March 2018

- ☑ **The deadline for those participants who are not included in the register to apply tax benefits**

Rulling № 305-ES21-11548 of the Judicial Board for Economic Disputes of the Russian Supreme Court dated 20 September 2021 in case № A40-248146/2019



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SPIC 2.0: Special investment contract



16 December, 2021

Andrey Sulin
Partner
EY

SPIC 2.0: obligations and incentives

Parties and obligations



Incentives

Tax reliefs

Profits tax

Reduced tax rates:

- Federal budget – 0%;
- Regional budget – up to 0% (according to regional law)

Abnormal depreciation

Property tax

up to 0% (according to regional law)

Transport tax

up to 0% (according to regional law)

Land tax

up to 0% (according to municipal law)

Public contracts

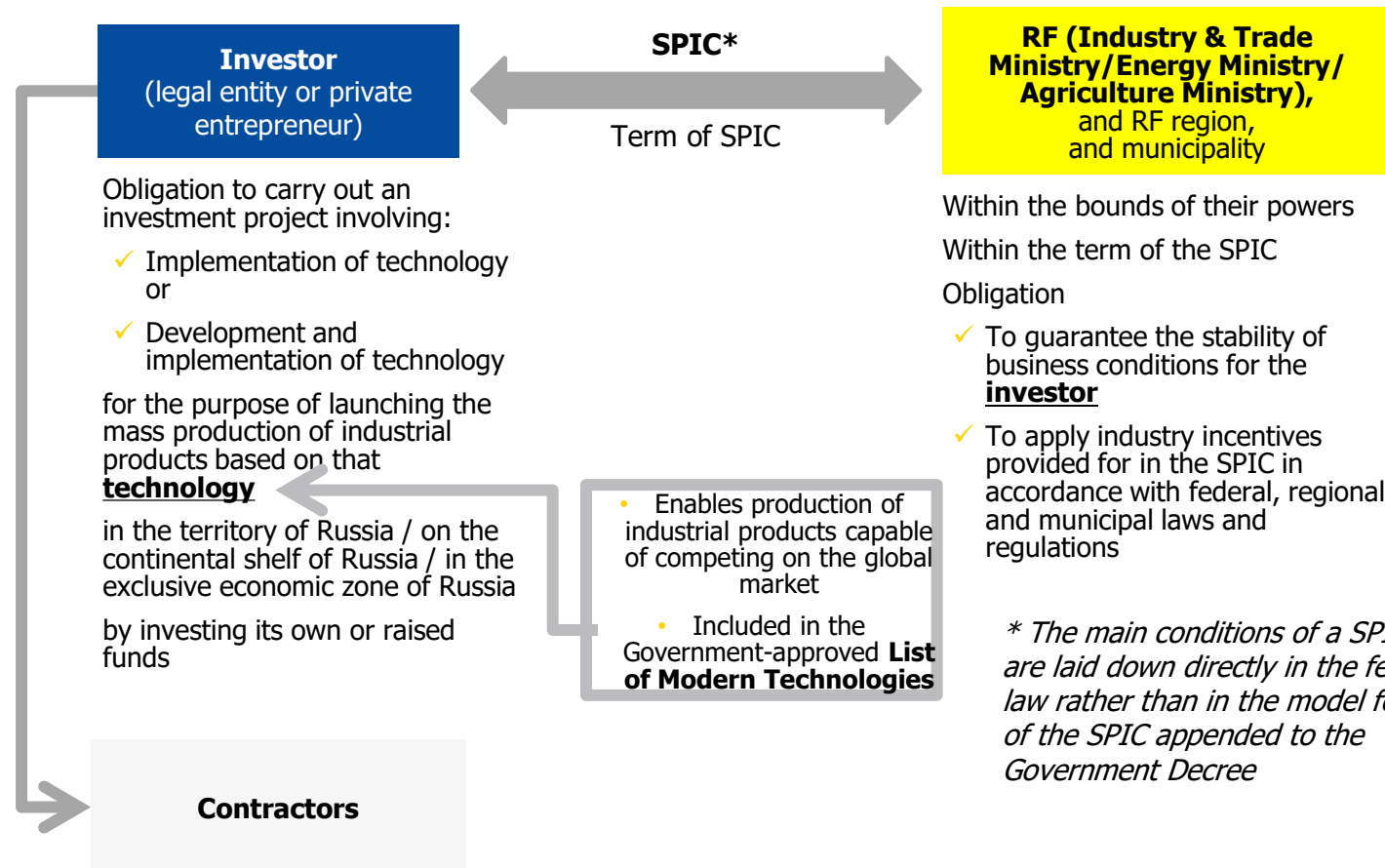
- “Sole supplier” status

Localization of products

- “Russian manufacturer” status



SPIC Subject-Matter and Parties



Essential Conditions of a SPIC: Obligations of the Investor

A SPIC 2.0 must establish the Investor's obligations:

1

To make investments in the prescribed amount in accordance with the schedule

2

To develop or obtain the right to an "approved" technology and implement it

3

To ensure that rights in IP assets within a technology are received by the date of concluding the SPIC or another date

4

To secure the right to create IP assets based on IP assets within a technology

5

To execute the project to the extent laid down in the tender bid (performance of specific production operations)

6

To ensure the achievement of target figures: volume of products produced and sold; amount of taxes; number of jobs

7

To maintain separate management records of income and expenses in connection with the project and of assets and property rights acquired*

** If the Investor carries on other revenue-generating activities not related to the SPIC*



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SZPK: Agreement on protection and enforcement of investments



16 December, 2021

Nina Goulis
Partner
KPMG

SZPK

Investment project

Development/construction and further exploitation; OR
Modernization/reconstruction and further exploitation
OF immovable property and/or a set of related movable
and immovable property
AND/OR
Development and further exploitation of IP

Important features of the investment
projects

Investment volume
Volume of the own funds
Industry
Investments in infrastructure
Timeframe for conclusion of SZPK

Official data

36

SZPK already signed. The
volume of investments
exceed RUB 1.3 trl.

76

SZPK applications for 76
projects worth RUB 1.6 trl.

600

SZPK are expected to be
concluded before 2024. The
expected volume of investments
is RUB 12.6 trl.

Guarantees on tax stability

RF+REGION+MO

- **Profits tax:** changes in tax objects, the determination of the tax base, tax period, rates, calculation and deadlines
- **Property tax and transportation tax:** changes in the determination of the tax base, rates, concessions, calculation and deadlines
- **Land tax:** changes in rates, concessions and approach to payment
- **VAT:** in respect of changes in payment deadlines and offset
- In respect of non-application of new taxes and duties (except for situations when taxes are replaced)

RF+REGION

The same except for Land tax

REGION+MO

The same for property tax, transportation tax and land tax only.
No profits tax, VAT and protection against new taxes

REGION

The same for property tax and transportation tax only

The period depends upon the volume of investments and industry

6 years – up to RUB5 bln.

10 years – agriculture, food and processing industries, education, health with investments up to RUB5 bln. (new);

15 years – from RUB5 u do 10 bln.;

20 лет – from RUB10 bln.

SZPK tax deduction (draft law – passed the 1st hearing in the State Duma)



- Profits tax
- Property tax
- Transportation tax
- Land tax

The eligible taxes due can be reduced to zero

- The assets cannot be depreciated
- Infrastructure expenses cannot be deducted
- Relatively easy to apply
- In case of SZPK denunciation, the tax deductions must be reimbursed in full
- Separate accounting



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Localization of accounting databases – new requirements under FSBU 27/2021



December 16, 2021

Marina Tokunova
Partner
Baker McKenzie

Dmitry Kirillov
Counsel
Lidings

Federal Accounting Standard 27/2021 "Accounting documents and document flow" (FSBU 27/2021)

FSBU 27/2021

- has the status of an order of the Russian Ministry of Finance
- is mandatory for all economic entities (with the exception of public sector organizations)
- enters into force as of 1 January 2022
- replaces the Regulation on accounting documents and document flow, approved by the order of the USSR Ministry of Finance dated 29 July 1983 No. 105

FSBU 27/2021 establishes requirements for

- accounting documents (primary documents and accounting registers)
- the procedure of an accounting document correction
- accounting document flow
- storage of accounting documents and of databases of such accounting documents **in Russia:**

Draft FSBU 27/2021 dated 12 March 2021

24. An economic entity must store accounting documents, including placing databases of information in which the collection, recording, systematization, accumulation, storage, clarification (updating, changing), retrieval of accounting information and accounting documents (copies of documents) are carried out, on the territory of the Russian Federation.

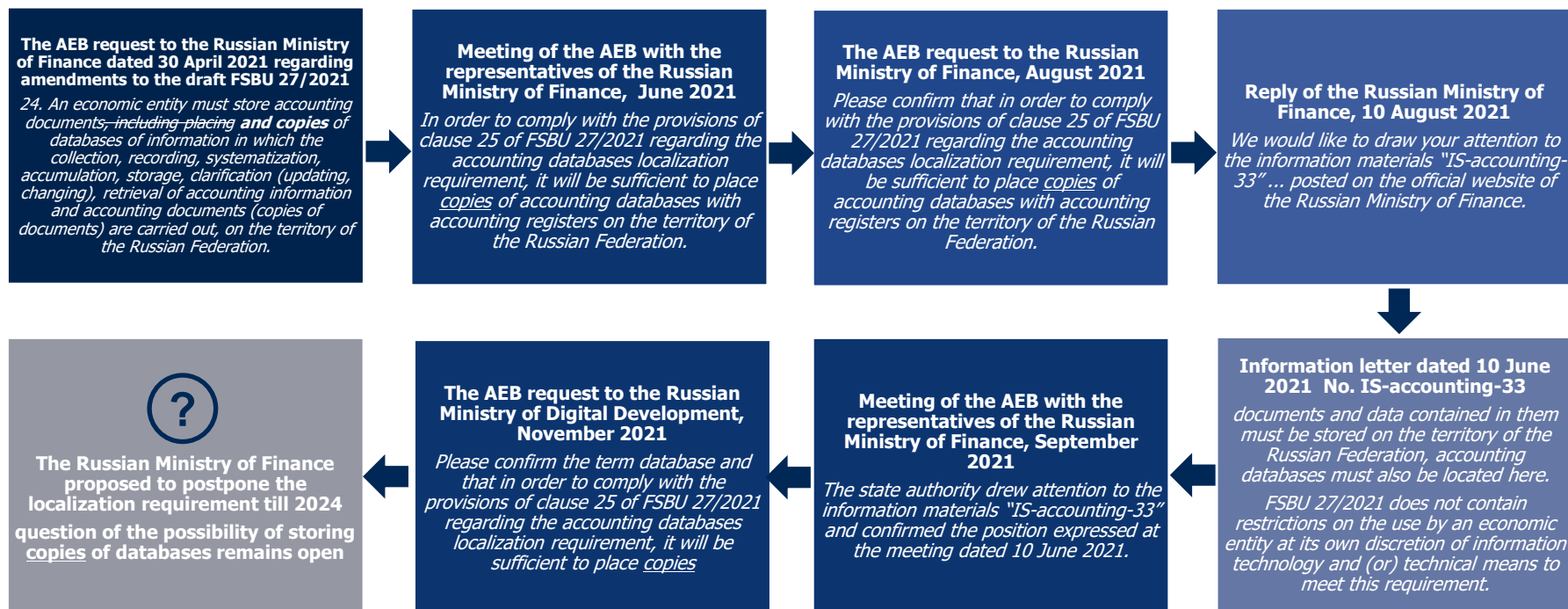


The adopted version of FSBU 27/2021 dated 16 April 2021

25. An economic entity must store accounting documents, as well as data contained in such documents, and place the databases of these data on the territory of the Russian Federation.

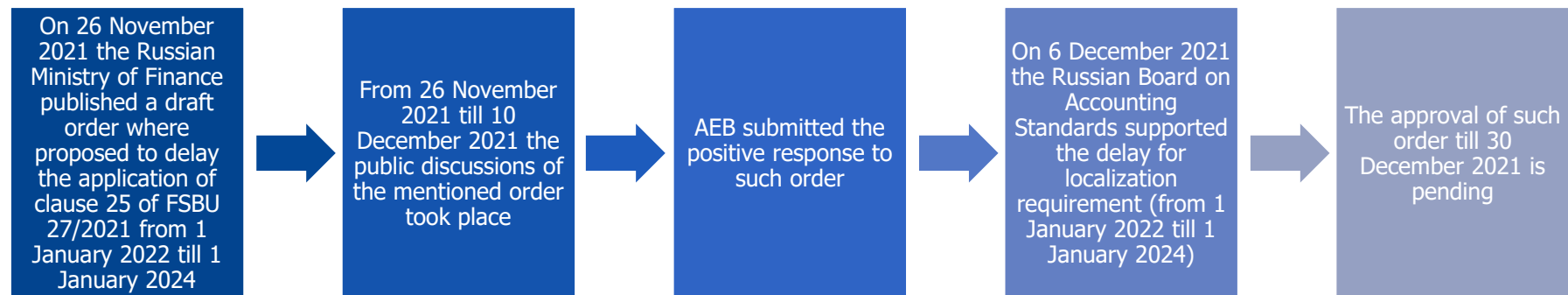
FSBU 27/2021: Localization of accounting databases

Current status of the interaction with the Russian Ministry of Finance



FSBU 27/2021: Localization of accounting databases - delay till 2024?

Clause 25 of FSBU 27/2021



ISSUES TO BE RESOLVED WITH FSBU 27/2021

What is the accounting database in the sense of the Standard?

A definition from Art. 1260 of the Russian Civil Code should be used.

What is the difference between the original accounting database and its copy?

Russian Civil Code distinguishes original copy and further copies as such, for databases this difference is questionable.

What software can be used to store the accounting database in Russia?

Any software, however the reader should remain available.

ISSUES TO BE RESOLVED WITH FSBU 27/2021

Can an accounting database be stored abroad and its copy be localized in Russia?

Minfin comments tentatively allow this, however a number of related issues remain unclear.

How often an accounting database stored abroad has to be synchronized with the Russian copy?

No official clarifications on this matter, the most reasonable timing appears to be monthly or quarterly.

Does storage of an accounting database abroad and granting an access to it upon state authorities' requests comply with the Standard?

Such approach is insufficient to comply with the localization requirement. Direct access to the databases (original copy or copies?) is required.



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Tax control outside tax audits: useful tips



16 December, 2021

Alexander Erasov
Counsel, Head of Tax
Dispute Resolution Group
BCLP

TAX CONTROL IS NOW COMPLETELY DIFFERENT FROM BEFORE

	2015	2016	2017	2018	2019	2020	1st half of 2021
Number of field tax audits (x 1000)	30,7	26	20,2	14,2	9,3	6,1	3
Number of tax disputes in courts (x 1000)	13,4	11,8	12	12,1	10,2	6,7	3,2
Number of cases won by taxpayers in courts of 1-st instance	50%	44%	42%	38%	39%	36%	34%
Budget revenues upon voluntary revisions by taxpayers (billion RUB)	9	28	56	78	129	158	?



TAX CONTROL ACTIVITIES OUTSIDE TAX AUDITS

- ▶ Request for documents on a “specific transaction”

NB: court practice is controversial

- + Resolution of the Moscow Commercial Court dated 14 October 2021 on case No. A40-105384-21-116-594
- Resolution of the Moscow Region Commercial Court dated 11 March 2020 on case No. A40-170619/2019

- ▶ Employee questionings

- ▶ Visual inspections

- ▶ Using controls and incentives to spark “voluntary” payment of extra tax (commissions/meetings/ “good news” letters)

USEFUL TIPS

Opportunities:

- + Avoiding field tax audits and liability
- + Significantly reducing the scope of documents and information to be provided (*Russian Federal Tax Service Letter No. ED-4-2/12216@ dated 27 June 2017*)
- + Reducing amounts potentially claimed (aka “voluntary” payment of extra tax)

Don't forget to:

- ✓ Focus on the powers of tax authorities, document types and addressees
(*Russian Federal Tax Service Letter No. EA-4-15/16838@ dated 2 December 2021*)
- ✓ Extend timelines for preparing responses
- ✓ Build a strong legal case
- ✓ Reach out for legal assistance in the very early stages
- ✓ Use creative defence approaches (including through business associations)
- ✓ Prepare defence file – it is the key to success



Alexey Lyudvik

**Deputy Chairman of the AEB
Taxation Committee, VW Group**

CLOSING REMARKS

