



Development of the Russian Tax System in 2013

and Prospects for 2014 – 2017

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Dr. Frank Schauff,
Chief Executive Officer,
Association of European Businesses

Opening Remarks

Dr. Alina Lavrentieva,
PwC partner,
Chairperson of the AEB Taxation
Committee

Sergey D. Shatalov,
Deputy Minister of Finance of the RF

*Main trends of the taxation policy for
2014-2017*

Vadim Zaripov,
Head of Analytical Department,
Pepeliaev Group,
Deputy Chairperson of the AEB
Taxation Committee

State taxation policy – expert's view

Three pillars of tax policy

(Budget message of the President of Russian Federation regarding tax policy in 2013-2015)

- Not increasing of tax burden for non-energy sector of economy
- Convenient administration for good-faith taxpayers
- A campaign against offshore zones, shell companies and other avenues for tax evasion

So, what do we see?

The Unbearable Lightness of tax burden....

While tax rates remain virtually unchanged:

- the tax base is shifting (property tax with cadastral value)
- some taxes and fees are being introduced that are not provided for by the Tax Code
- tax exemptions are being revoked

Tax service: Can we help you pay your taxes?

- Preliminary pricing agreements, voluntary settlements and horizontal monitoring - successful PR efforts by the Russian Federal Tax Service?
- “Bureaucratic overkill” at the local level
- Businesses are held accountable for each and every mistake they make, while government authorities are not

Campaign against tax non-payers or campaign against investors?

- The buyer is always liable for shell companies, although such “go-between” structures are often created by the seller (the importer, the manufacturer or a major distributor)
- De-offshorisation is achieved not by parliamentary means but through the courts with retroactive force (the “theory of relativity” in tax law)
- There are controlled transactions and controlled transactions

Balanced approach is key!

Questions?

Svetlana Zobnina, Partner, EY

Corporate Property Tax Key changes and impact on business

Transition to cadastral value: when and where?

Four main steps:

- to amend the Tax Code

- to accomplish cadastral valuation **most of the regions**

- to amend regional laws **some regions**

- to publish list of objects **Moscow**



Economic effect: practical example

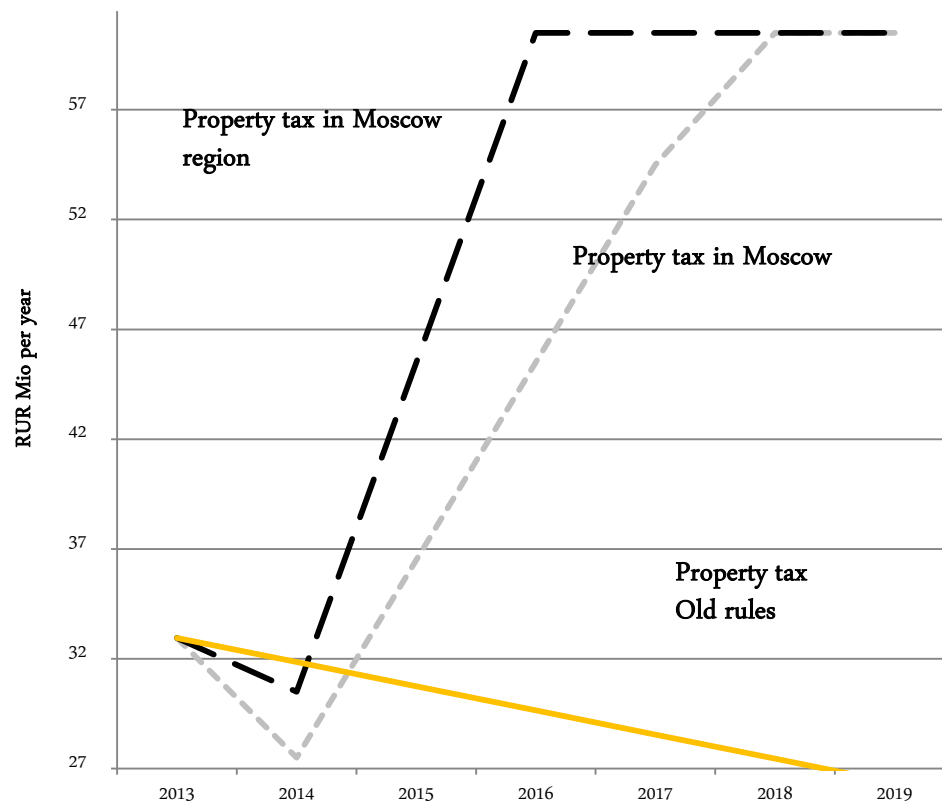
Facts

Shopping center in Moscow/Moscow region

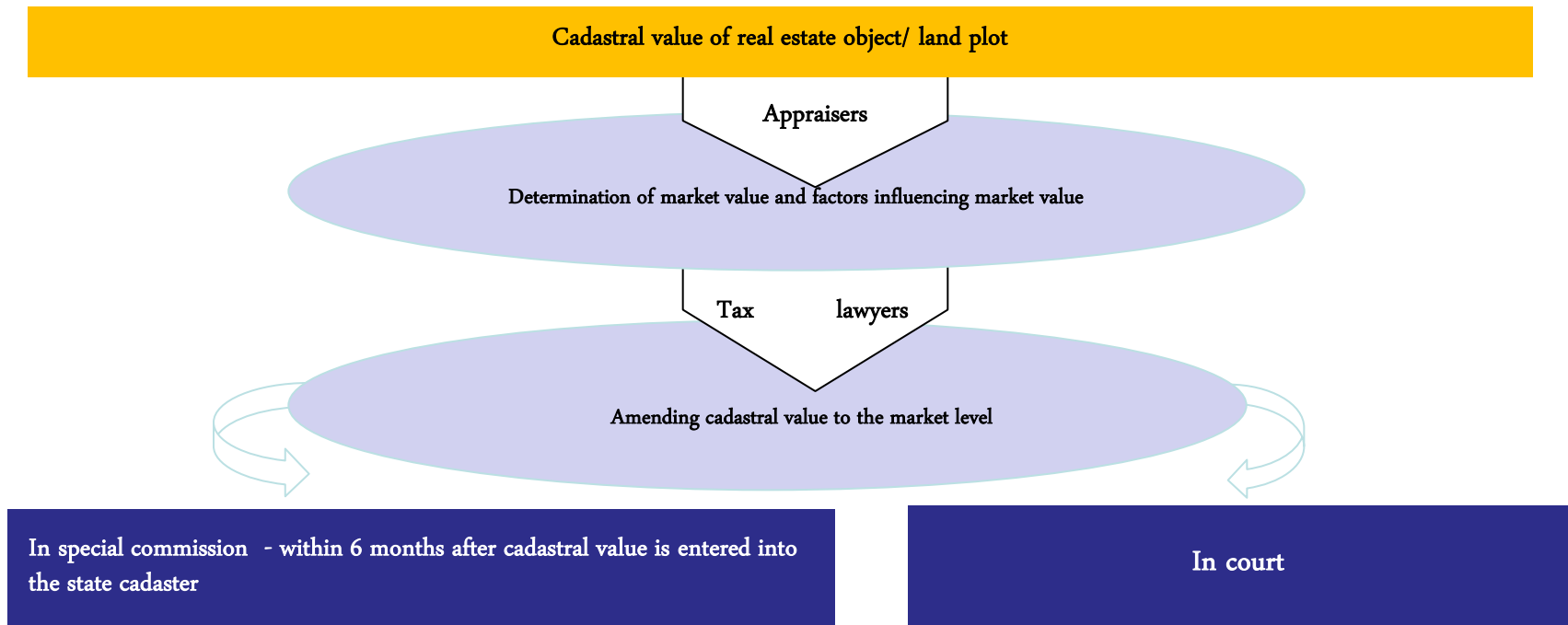
- ▶ Size > 5,000 m²
- ▶ NBV as of 1.1.2013 = RUR 1,5 bln
- ▶ Linear depreciation, useful life - 30 years
- ▶ Cadastral value = RUR 3 bln

Property tax 2014-2018

- ▶ Old rules – RUR 146 Mio
- ▶ Shopping center in Moscow – RUR 222 Mio
- ▶ Shopping center in Moscow region – RUR 255 Mio



- ▶ Most of the regions have published cadastral value of real estate objects, the results of cadastral valuation of land are periodically amended
- ▶ The results of cadastral valuation may be overstated, which will lead to overstatement of property tax in the future (current land tax)



Questions?

Daniel Egorov,
Deputy Head of the Federal Tax
Service

*Tax administration: global and Russian
trends*

Arseny Seidov,
Partner, Baker & McKenzie C.I.S.

New anti-offshore initiatives

Law On Combating illicit financial operations – High-level overview

- Federal Law No. 134-FZ:
 - generally positive changes (e.g. corporate registration rules), aimed at *male fide* companies (e.g. additional grounds to recover tax arrears from affiliated companies; subsidiary liability of debtor's managers in case of bankruptcy), but also imposes additional administrative burden on compliant companies (e.g. new rules on VAT reporting and responding to requests of tax authorities)
 - special ***simplified procedures revoked*** for authorized economic operators (AEO) ***importing*** goods from, or ***paying*** for imported goods through, offshore territories falling into the Ministry of Finance list
 - ***customs risk management system*** extended to cover operations with residents of offshore territories
 - ***tougher criminal liability*** for non-repatriation of currency by Russian residents

Law On Combating *illicit financial operations* – Impact of new concept of beneficiary owner

- **"Beneficial owner"** - an individual that directly or indirectly owns more than 25% of a legal entity or otherwise controls its actions
 - ✓ sole executive body of a company may be treated as the beneficial owner, unless otherwise established (should encourage management to disclose actual beneficiary owners)
 - ✓ definition introduced for purposes of anti money-laundering legislation (yet no procedure for the tax authorities to get access to information)
- Tax trends in ***disclosing actual recipient of income*** (Federal Law No. 306-FZ)
 - ✓ income from Russian securities and financial instruments subject to 30% withholding tax unless the recipient is disclosed

New legislative trends

- ***2013 President's message to the Federal Assembly: combating offshores***
 - ✓ CFC rules introduction
 - ✓ no access of offshore companies to government guarantees and VEB credits
 - ✓ no access of offshore companies to the state contract system
- ***Legislative Initiatives of the Finance Ministry***
 - ✓ Russian tax residence determined based on local production
 - ✓ CFC rules
 - ✓ access to state contracts and state guarantees only upon disclosure of information on ultimate beneficiary
 - ✓ relevant draft laws expected in the first 6 months of 2014
- ***Draft law No. 295667-6***
 - ✓ even broader scope of restrictions for offshore companies than in the President's message
 - ✓ submitted in June 2013, not yet considered by the State Duma

Questions?

Evgeny Timofeev, **Senior Partner, Goltsblat B.L.P.**

SCC Cases That Shook the Tax

VAT: Gazprom transgaz Krasnodar: Proved credits to be taken into account by tax audit – even if not stated on the return

If no corrective VAT invoices for bonuses issued (prior to July 2013):

Correction of credits required: Yug-Auto (SCC panel on case of NCD), Aksel-Nord (NWD)

No Correction: Prodservice, Altaiaagrotekh (WSD), Billa, Media-Markt-Saturn, GALF-Trade (MD), Russky Sever (NWD), many appeal courts

Profit Tax – Dividends and Interest:

- **Mirdad:** 0% rate applies regardless of 500 M criterion to any dividend paid after 2010
- **Center:** Interest on loans to finance dividends deductible
- **ЭP-Telecom Holding:** Thin cap rules apply to quarters separately
- **JTI Yelets (NWD):** and even within a quarter (ratio on the payment day)
- **Pirelli (Moscow City CC) and United Bakers (NWD):** rules apply to “sister” company loans
- **Topaz:** rules apply even if equity sucked out by illegal collection of taxes

Profit Tax – Retail Theft Losses

Auchan et al. vs. the Ministry of Finance:

Losses in sales areas –not “expenses in the form of shortage” but
“losses from theft”

Criterion for expenses is “lack of guilty persons”, for losses – “lack of
their identification”

Police document requirement applies to “lack of guilty persons”, not
to “lack of identification”, and

Such requirement would have been excessive and impossible to
meet as identification of those guilty IS impossible

Contact information:

Capital City Complex, Moscow-City Business Centre

Presnenskaya nab., 8, bld. 1

Moscow, 123100, Russia

Tel.: +7 495 287 44 44

Fax: +7 495 287 44 45

Email: info@gbplaw.com

www.gbplaw.com

Personal: Evgeny.Timofeev@gbplaw.com

Maxim Vladimirov,
Partner, Noerr

Court practice on taxation matters

Cost sharing/ Accounting of non-removable improvements

- **BAT case**
 - **ZAO MUMT (lost in court of cassation)**
 - Dramatic increase of cost of services provided by UK entity to ZAO MUMT
 - Confusing interpretation of services: treatment as cost allocation
 - **BAT STF (lost in court of appeal, now: in court of cassation)**
- **IKEA MOS case (won in Supreme Arbitrazh Court)**
 - Inseparable improvements carried out by lessee are not income of lessor

Permanent Establishment

- **Berlin-Chemie case (won in court of appeal)**
 - Tax authorities imputed a PE based on RO marketing activity partly benefit to Russian subsidiary
- **OOO Fesco Lines (won in court of appeal)**
 - Tax authorities imputed a PE of foreign legal entity, but OOO Fesco Lines assessed for tax underpayment
 - Containers owned by foreign legal entity were managed by OOO Fesco Lines
 - OOO Fesco Lines signed contracts with customers/ contractors according to instructions and at request of foreign owner

Liability of tax agent

- **Resolution of the Supreme Arbitrazh Court of the RF No. 57**
 - Tax agent is liable for tax and fine if no withholding taxes
 - *Before*: Ulyanovsk Motor Plant Case - imposition of VAT, fines and penalties on tax agent

Questions?



The Association of European Businesses (AEB)

Ul. Krasnoproletarskya 16, bld.3

127473 Moscow, Russia

Tel.: +7 (495) 234 27 64

www.aebrus.ru