

RUSSIAN TAXATION OVERVIEW 2015



General taxation issues

Exemption of fixed assets from property tax

On 23 October 2015, a draft bill was proposed for consideration to the State Duma stipulating exemption from corporate property tax for any property recognised as a fixed asset after 1 January 2013 irrespective of any reorganisation or liquidation of the transferring organisation or affiliation between transferee and transferor.

[Draft Bill No. 912150-6](#)

Cadastral appraisal

The Draft Bill on State Cadastral Appraisal in the Russian Federation cancels the mandatory pre-trial dispute resolution procedure regarding the results of the land cadastral value determination for legal entities as well as state authorities and local government bodies.

The principle of openness of the state cadastral appraisal procedure is for-

malised, meaning that state authorities are obliged to publish the relevant information on their official websites as well as in printed periodicals at all stages of the state cadastral appraisal procedure. The draft bill stipulates the procedure for processing the list of information for the purposes of determination of the cadastral value and submission of declarations clarifying features of the real estate item, etc. by interested parties.

[Draft Bill No. 914532-6](#)

VAT on advance payments

At present a seller has to assess the amount of VAT upon receiving an advance payment. The seller has the right to declare this VAT amount for deduction when making a final supply. A draft bill stipulating cancellation of VAT on advance payments has been put forward for public consultation.

In spite of the apparent simplification of VAT administration, the proposed amendments de facto will not help tax accounting because suppliers would

Dear Readers,

The year 2015 that is now ending was marked by a variety of amendments to Russian tax legislation as well as controversial court practice in Russian and international taxation. Since January 2015 regulations on controlled foreign companies, tax residency and effective right to income (beneficial ownership) introduced by Federal Law No. 376-FZ have entered into force and at present so called “deoffshorisation laws” are being rapidly refined and developed.

In the present overview we have tried to cover recent legislative initiatives concerning Russian and international taxation as well as law enforcement practice on some issues of transfer pricing.

Please note that the present non-exhaustive overview addresses only a few issues of legislative and law enforcing activities which in our view are important for taxpayers.

We wish you every success and prosperity in the coming 2016 year!

Best regards,



Maxim Vladimirov

face considerable difficulties when issuing VAT invoices due to the need to determine the unpaid value of each unit of goods (work or service) at the time of sale.

[Draft Bill No. 02/04/08-15/00038680](#)

Information not regarded as tax secrecy

The draft bill abolishes tax secrecy in relation to the following information about taxpayers (legal entities):

- Average number of employees of a legal entity in the calendar year and aggregate amount of employees' income for the preceding calendar year;
- Amounts of taxes and duties paid during the preceding year;
- Amount of revenues and expenses according to accounting (financial) statements of a taxpayer.

[Draft Bill No. 911054-6](#)

Consolidated groups of taxpayers (CGTs)

According to the draft law posted on the Federal Portal of Draft Laws and Regulations (www.regulation.gov.ru) on 7 September 2015 it is suggested to extend the moratorium on establishing CGTs from 1 January 2016 to 1 January 2019. Moreover, the said draft bill introduces stricter requirements for the establishment of CGTs (for example, a CGT may not be established for less than five years, former CGT members are prohibited from establishing a new CGT for five years after termination of their membership).

Property tax in Moscow

A Draft Bill on the Introduction of Amendments to the Law of the City of Moscow on Corporate Property Tax referred to the Moscow City Duma for consideration on 10 November 2015 stipulates the following amendments:

- Reduction of tax rates in relation to real estate items for the transitional period until 2018;

- Increase in the number of taxation objects (thus, according to the proposed amendments administrative and business centres will be subject to taxation irrespective of their floor space);
- Extension of the list of real property items subject to tax multiplication factor of 0.1.

Draft bill on Ecological levy

In accordance with decisions taken by the Government of the Russian Federation, zero waste disposal limits were introduced for 2015: i.e. there is no need for calculation and payment of Ecological levy by manufacturers and importers of goods.

It is further not required to file reports regarding the quantity of finished goods including packing released for free circulation in the territory of the Russian Federation. Payers of Ecological levy will have to provide their first calculations of the Ecological levy value for the reporting period in which the respective form for calculation is approved.

[Clarifications of the Ministry of Natural Resources and Environment of the Russian Federation](#)

International taxation

Controlled foreign companies

A Draft Bill on the Introduction of Changes to Parts I and II of the Russian Tax Code and Federal Law No. 376-FZ dated 24 November 2014 (relating to Taxation of the Profits of Controlled Foreign Companies and Revenues of Foreign Entities) was submitted to the State Duma of the Russian Federation on 14 December 2015.

The Russian deoffshorisation laws comprise regulations addressing three main areas:

- Controlled Foreign Companies (CFC);
- Tax residency of legal entities;
- Concept of effective right to income (beneficial ownership).

The present overview focuses on the following changes proposed in the draft bill and affecting the three mentioned areas as well as other topical issues of international taxation.

[Draft Bill No. 953192-6](#)

Taxation of CFCs

In particular, the draft bill proposes the following amendments:

- Exclusion of some types of revenue of CFCs from the list of passive income, for example exchange rate differences and participation interest revaluation;
- Tax exemption of profits of certain SPVs issuing Eurobonds;
- Exemption from obligation to submit notifications for persons participating in a CFC solely via direct and/or indirect holdings in Russian public companies;
- Russian trustees who make contributions to the capital of foreign entities or transfer property to foreign structures with no corporate status are responsible for submitting notifications;
- Cancellation of requirement of mandatory audit of financial statements of a CFC for the purposes of profit calculation;
- Calculation of profits based on CFC financial statements if a CFC is resident in a country which has a DTT with Russia not included in the blacklist of the Federal Tax Service (FTS), or if a positive audit opinion is provided;
- Application of IFRS for the purposes of calculating the CFC's profits if the personal law of the CFC does not require financial statements;
- Calculation of CFC's profits based on the Russian tax regulations (Chapter 25 of the Russian Tax Code) should be laid down in the CFC's accounting policy and the term of application must be at least five years;
- Notification requirement regarding a CFC and tax payment for the Rus-

sian residents whose interest in the CFC ranges from 10% to 25% provided that Russian residents hold cumulatively more than 50% of CFC shares. If a persons was unaware of other Russian residents participating in a CFC, he/she can be exempted from tax liability;

- Obtaining control over a CFC from relatives cannot be regarded as taxable income;
- Tax exemption of dividends upon the receipt of CFC taxable profits which have already been subject to tax;
- Profits of a CFC may be reduced by the amount of profit distributed not only to controlling persons but other persons as well;
- Extension of total period of tax-free liquidation of the CFC until 1 January 2018.

The draft bill clarifies the determination of a person's participation in the CFC if it is established in the form of a structure with no corporate status or a foreign legal entity with no share capital. In this case participation is determined in proportion to the value of the contribution or the number of participants. If a person participates in the CFC via an investment fund, such person's interest in the CFC is proportionate to his interest in the investment fund. Situations where the interest held by the controlling person does not correspond to his share in profits is also covered. In this case, the controlling person's share in the profits determines his share in a CFC.

Further, there are some other regulations in the Draft bill:

- Addressing the procedure where tax authorities notify a person that he is believed to control a CFC based on the information received from foreign authorities;
- Regulations concerning application of tax deductions;
- CFC profit accounting regulations etc.

It is suggested that the majority of the amendments mentioned in the Draft Law would apply from 1 January 2015.

Tax residency

A draft bill suggests extending the list of foreign companies that can be recognised as tax residents of the Russian Federation solely on a voluntary basis. For instance, subject to certain conditions companies renting ships and containers as well as some other organisations may be voluntarily recognised as Russian tax residents. The draft bill also amends the procedure for determining the first tax period for organisations which have voluntarily declared themselves to be Russian tax residents.

Further, the draft bill contains regulations making the procedure for recognising a foreign investment fund as a Russian tax resident due to its actual place of management in Russia more onerous.

If foreign companies who are residents of the Russian Federation wish to de-register, tax authorities will be required to verify the respective reasons.

Effective right to income (beneficial ownership)

According to the proposed amendments:

- An obligation of foreign recipient to provide confirmation of beneficial ownership of income received is introduced;
- The possibility of recognising foreign structures with no corporate status as persons who have effective right to income (beneficial owners) is formalised;
- As one of the criteria for recognising a person as a beneficial owner it was decided to leave the wording "wholly or partially" in relation to paid income and not to replace it with the wording "all or almost all";

- The possibility of waiving effective right to income is provided for in relation to part of dividends.

Other international taxation issues

a) Russian source of income

According to the amendments effective from 1 January 2015, capital gains from the sale of participation interest/shares in any entities (including foreign entities) in which more than 50% of assets directly or indirectly comprise real estate located in the territory of the Russian Federation are subject to taxation in the Russian Federation.

The draft bill posted on the Federal Portal of Draft Laws and Regulations on 29 October 2015 introduces an obligation to register with the tax authorities and calculate and pay profit tax for a foreign entity with no permanent establishment in the Russian Federation. Such foreign entity should register if:

- It acquires participation interest/shares of companies in which 50% of the assets directly or indirectly comprise real estate located in the territory of the Russian Federation and;
- Seller is a foreign entity which has no permanent establishment in the Russian Federation.

b) Blacklist of the Federal Tax Service

One of the conditions for exemption of a CFC from tax is a domicile of a CFC in a state (territory) which ensures an exchange of information with the Russian Federation for taxation purposes.

The Russian Federal Tax Service prepared a Draft Bill on Approval of the List of States and Territories which do not ensure Information Exchange with the Russian Federation for Taxation Purposes comprising 119 states and 18 territories. Notably, this list includes not only traditional offshore territories but also tax jurisdictions such as Austria, UK, Switzerland and Brazil as well.

Transfer pricing

Audits of related parties transactions

According to Letter of the Russian Ministry of Finance No. 03-01-18/35527 of 19 June 2015, price audits carried out by local tax authorities may review only limited list of transactions laid down in Art. 105.3 of the Russian Tax Code.

Transactions not recognised as controlled and transactions in which the volume of income does not exceed the total value stipulated in Art. 105.14 of the Russian Tax Code cannot be subject to tax control.

At the same time, tax authorities express the position according to which local tax authorities are entitled to apply methods stipulated by Chapter 14.3 of the Russian Tax Code in order to investigate cases of unjustified tax enrichment as a result of manipulating prices in transactions that are not controlled (for example, *Letter No. 03-01-18/8-145 dated 18 October 2012, Letter of FTS of Russia No. ED-4-2/17078 dated 30 September 2015*).

In the course of tax audits, local tax authorities often try to investigate prices applied between related parties for a potential case of unjustified tax enrichment. The judicial practice on this issue known to us is quite controversial. In some cases courts agreed to the right of regional tax authorities to carry out price audits in transactions between related parties (see, for example, *Ruling of the Arbitration Court of Far Eastern District dated 19 August 2015 in case no. A04-8475/2014, upheld by Order of the Supreme Court of the Russian Federation dated 7 December 2015 in no. 303-KG15-15675*).

At the same time, in other cases (*Ruling of the Arbitration Court of North-Western District dated 24 July 2015 in case no. A26-7861/14*) the court considered the arguments of the tax authority on unjustified tax enrichment as not well established and stated, inter alia, that regional tax authorities are not authorised to carry out price

controls in transactions between related parties as this type of audit can only be conducted by the Federal Taxation Service.

According to the position the Russian Ministry of Finance expressed in Letter No. 03-07-11/6175 dated 1 March 2013, tax authorities may assess additional VAT by adjusting prices on the basis of the transfer pricing methods stipulated in Chapter 14.3 of the Russian Tax Code. Recent court decisions demonstrate that in some cases tax authorities succeed in applying this adjustment.

Granting of interest-free loans / use of SPARK as a source of price information

According to the position of the Russian Ministry of Finance, interest-free loans between related parties may be indicative of manipulation of contract terms and lead to the imputation of additional taxable income for lender (see, for instance, *Letter of the Russian Ministry of Finance No. 03-01-18/29936 dated 25 May 2015*).

In practice lenders were imputed additional non-operating income on such loans based on information about minimum and maximum interest and lending rates according to the Russian SPARK database.

In the court decisions known to us, the courts did not agree that lenders received unjustified tax enrichment on interest-free loans (for example, *Ruling of the Ninth Arbitration Appeal Court dated 30 September 2015 in case no. A40-204810/14*). The courts put forward the following arguments concerning the quality of data presented in SPARK:

- Tax authorities did not prove the absence of data on comparable lending rates in public sources in order to use data from SPARK;
- Based on certain case materials it is impossible to determine whether SPARK data complies with the requirements of the Russian Tax Code and whether the reports in question include actual transaction

prices or prices given in offers/advertisements;

- SPARK provides no information about affiliation as well as some certain data;
- Commercial loan is not comparable to a bank deposit or loan;
- Tax authorities incorrectly determined loan terms;
- Decisions were taken by the tax authority without regard to geographical and other factors.

Despite the fact that at least three rulings were issued in similar circumstances, we believe it is too early to draw the conclusion whether interest-free loans have adverse tax consequences or whether the SPARK database is applicable for transfer pricing purposes.

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