Important Recent Tax Changes

Requesting Documents Outside the Scope of a Tax Audit

Previously, the FTS had issued clarifications about additional requests for documents (information) regarding particular transactions made by the FTS outside the scope of a particular tax audit.

Now changes were made to these clarifications (the previous Letter cited a wrong Article of the Tax Code). The changes make clear the penalty is not for a failure to provide the tax authority with information necessary for the conduct of the tax audit (meaning of Clause 2, Article 126), but for not communicating information to the tax authority (meaning of the Article 129.1).

Amendment to Letter of the Federal Tax Service dated 27 June 2017 No. ED-4-2/12216@ (in paras four and ten, “pursuant to Clause 2, Article 126 of the Code” is replaced by “pursuant to Article 129.1 of the Code”,

Letter of the Federal Tax Service of Russia No. ED-4-2/17747 dated 06 September 2017

A Unit Investment Fund is not a Controlling Person for CFC Purposes

The duty to report under the Russian CFC rules that a foreign company’s shares (or participatory interest in the charter (share) capital (share fund)) were contributed to a unit investment fund can be imposed on both the holder of the investment unit and trust manager, but not the unit investment trust itself. Such holder of the investment unit or such trust manager can be treated as a controlling person in respect of such a foreign company and can be required to pay Russian profits tax on any CFC income from the foreign company’s activities.

Letter of the Federal Tax Service of Russia No. ED-4-13/18086 dated 12 September 2017

Russian Taxation of Copyright and License Income Paid to a Hong-Kong Company

If a Russian company is the tax agent with respect to a payment of income from a copyright or a license to a Hong-Kong resident, the Russian company must determine the amount of tax, and withhold and remit the tax to the Russian budget. The budgetary classification code (KBK) 182 1 01 01030 01 1000 110 is used for the amount of profit tax withheld from income of a foreign company which income is from
a copyright or license and which is not related to activity in Russia through a permanent representative office.

**Letter of the Federal Tax Service of Russia No. SD-4-3/18805@ dated 20 September 2017**

**Tax Evasion Using Dividend Payment Scheme**

Paying dividends to a fictitious or paper foreign company does not allow a taxpayer to utilize DTT-based tax benefits. This conclusion was the result of three court decisions in favor of the tax authorities; the decisions also imposed additional taxes, penalties and fines on the Russian companies involved. By agreeing with the tax authorities, the courts established the principle that if a foreign company does not perform any entrepreneurial activity, the company should not be treated as the beneficial owner (i.e., as the one “entitled to dispose of any income”). It was also established that the company was artificially included in the shareholding structure of the Russian company for the sole purpose of tax optimization, i.e., tax avoidance. The fact of entering the transaction solely for tax optimization means that the DTT-based tax benefits are not available. Therefore, a tax agent paying dividends to such a foreign company must apply the regular Russian withholding tax rate.

**Russian Federal Tax Service Information (21 September 2017).**

**Steps to Access an Account Blocked by the Russian Tax Authorities**

Discrepancies in various laws have caused difficulty in determining what steps to take upon obtaining an execution writ to debit cash funds from an account blocked by the Russian tax authorities. The Ministry of Finance (MinFin) provided an explanation to bankers and communicated them to officers of the Russian Federal Tax Service. Previously, MinFin had advised only in private rulings which were not a sufficient basis on which to act for the Russian Tax Service.

[Click here to read more](#)

**Roskomnadzor Seeks to Impose VAT on Sales into Russia by Foreign Online Retailers**

The head of Roskomnadzor has stated that domestic and foreign retailers should be competing on an even playing field.

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**Important Draft Laws**

**Country By Country Reporting (CbC) and Common Reporting Standards (CRS) Laws Passed First Duma Reading**

The draft laws provide procedures for Russian financial institutions to fulfill CRS requirements and the mechanisms for their application in Russia, as well as
requirements for preparing and submitting country-by-country reports and a notice of participation in a multinational enterprise group.

Draft law No. 231414-7 “On amendments to the Tax Code of the Russian Federation (in view of implementation of automatic exchange of financial account information and documentation on multinational enterprise groups)”

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**Law Introducing a VAT-Free System for Foreigners in Russia Passed First Duma Reading**

On 20 September, the State Duma passed in its first reading a draft law introducing a VAT-free system for foreigners buying goods in Russia while visiting.

Draft law No. 204712-7 “On making amendments to Article 88 and Chapter 21 of the Russian Tax Code (regarding a compensation to foreign national of VAT amounts on exports of goods acquired in the Russian Federation)”

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**Russian Tax Code Amendments to CFC Profit Taxation**

The amendments addressed the following: the ability to carry-forward CFC losses incurred during the three years immediately preceding 2015; conditions for exempting income from liquidation of a CFC (i.e. considering the time required to finish the liquidation procedure); procedures for imposing taxes on CFC transactions involving financial assets (including securities); procedures for calculating financial indicators and the taxable income of a CFC included in a foreign consolidated tax group; submission of documents confirming exemption from CFC profit tax as part of a multi-level ownership chain; a framework for determining the tax residence of legal entities, etc.

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**Ratification of the Customs Code of the Eurasian Economic Union before the Duma**

Draft law No. №264271-7 to ratify the Agreement on the Customs Code of the Eurasian Economic Union that was signed in Moscow on 11 April 17 has been presented to the Duma. The Agreement is aimed at unifying tax regulation in the Eurasian European Union:

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**Review of International Laws**

**Swiss Parliament Approved Exchange of Financial Information with Russia**

On 27 September 2017, the Swiss parliament voted in favour of including Russia on the list of countries with which information will be exchanged starting in 2019. However, to exchange information with Russia, Switzerland must develop the relevant legal framework and sign an agreement with Russia.

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Hong-Kong will be Removed from the Russian Blacklist of Offshore Zones

The Russian Ministry of Finance will remove Hong-Kong from the blacklist of offshore zones as a result of the new double taxation agreement between Russia and Hong-Kong. The agreement and protocol entered into force 1 January 2017.

Findings of the OECD Forum on Tax Administration Published

The plenary session of the Forum on Tax Administration considered such issues as implementing the BEPS Projects, creating a system to automatically exchange tax information and rendering assistance to developing countries so as to strengthen their tax administration potential.

OECD Reports on Improving Mechanisms for Resolving Tax Disputes

The OECD published expert reports from several countries as to how to implement the provisions of the BEPS Project directed at improving the mechanisms for resolving tax disputes under DTTs.

Such reports include over 110 recommendations how to fulfill the requirements of Action 14 of the BEPS Project aimed at improving the mutual agreement procedures for resolving disputes related to the application of a DTT.

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