



# **DEVELOPMENT OF THE RUSSIAN TAX SYSTEM: RESULTS OF 2016 AND PERSPECTIVES**



# **Dr. Alina Lavrentieva**

## **Chairperson of the AEB Taxation Committee, PwC**

### ***OPENING REMARKS***



# **DEVELOPMENT OF THE RUSSIAN TAX SYSTEM: RESULTS OF 2016 AND PERSPECTIVES**

## **SESSION 1**



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# **Sergey Shatalov**

## **Vice President, Media Group “Action-MCFER”**

# **NEW OECD MULTILATERAL CONVENTION (MLI) - EN MASSE AMENDING DOUBLE TAX TREATIES**

## **UPCOMING CHANGES IN THE TAXATION OF COMPANIES:**

- Losses accounting limitations**
- Increasing fine rates**
- Abolition of federal level tax exemption  
with respect to movable property**
- Other important amendments**



# Experts:

**Mikhail Filinov, *PwC***

**Anton Nikiforov, *Pepeliaev  
Group***

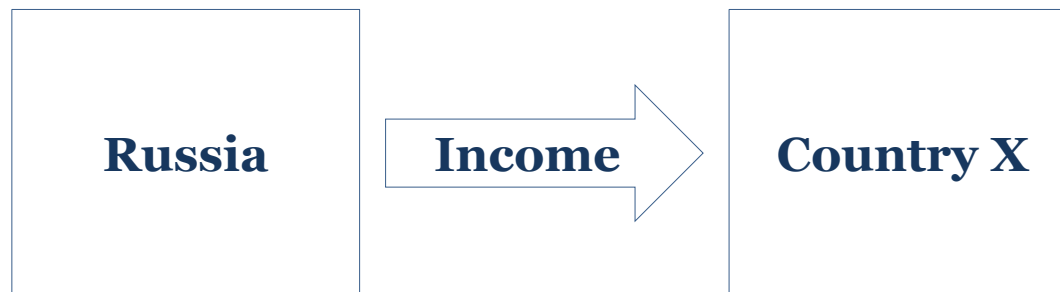


# MLI: Changing the DTTs

**Mikhail Filinov**

PwC

## *How does it work?*

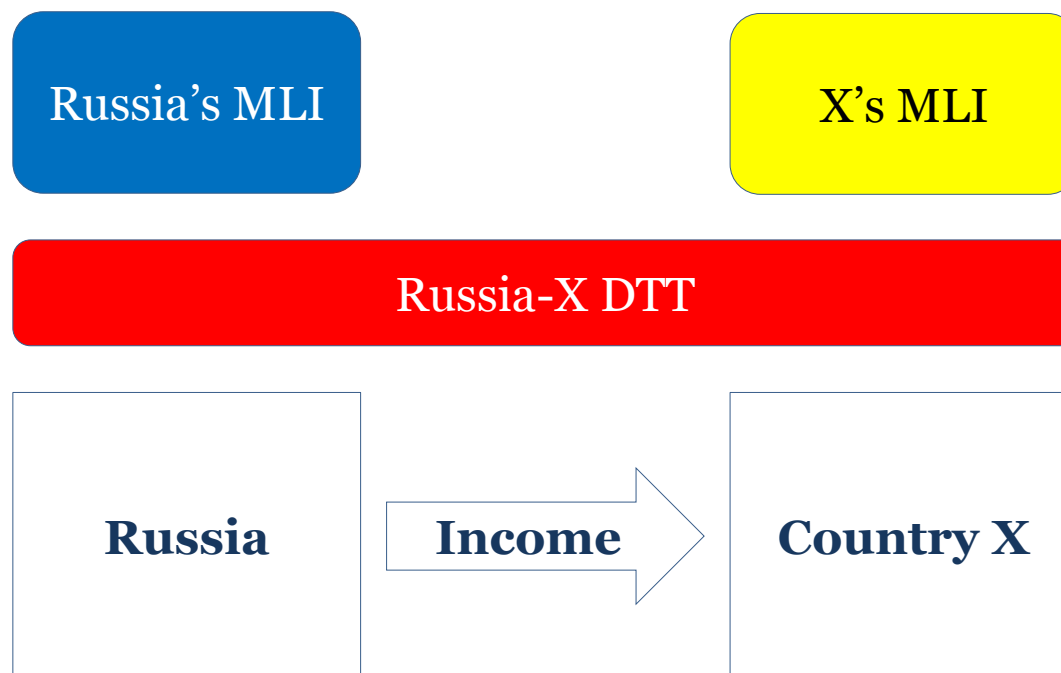




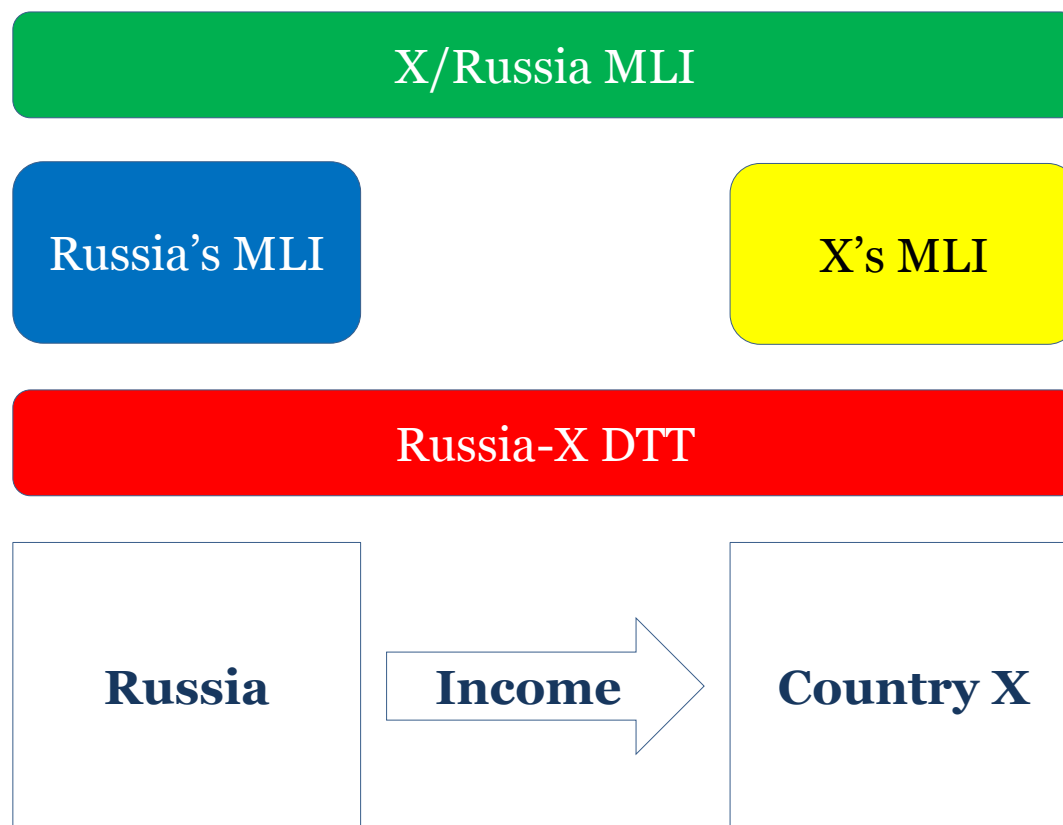
## *How does it work?*



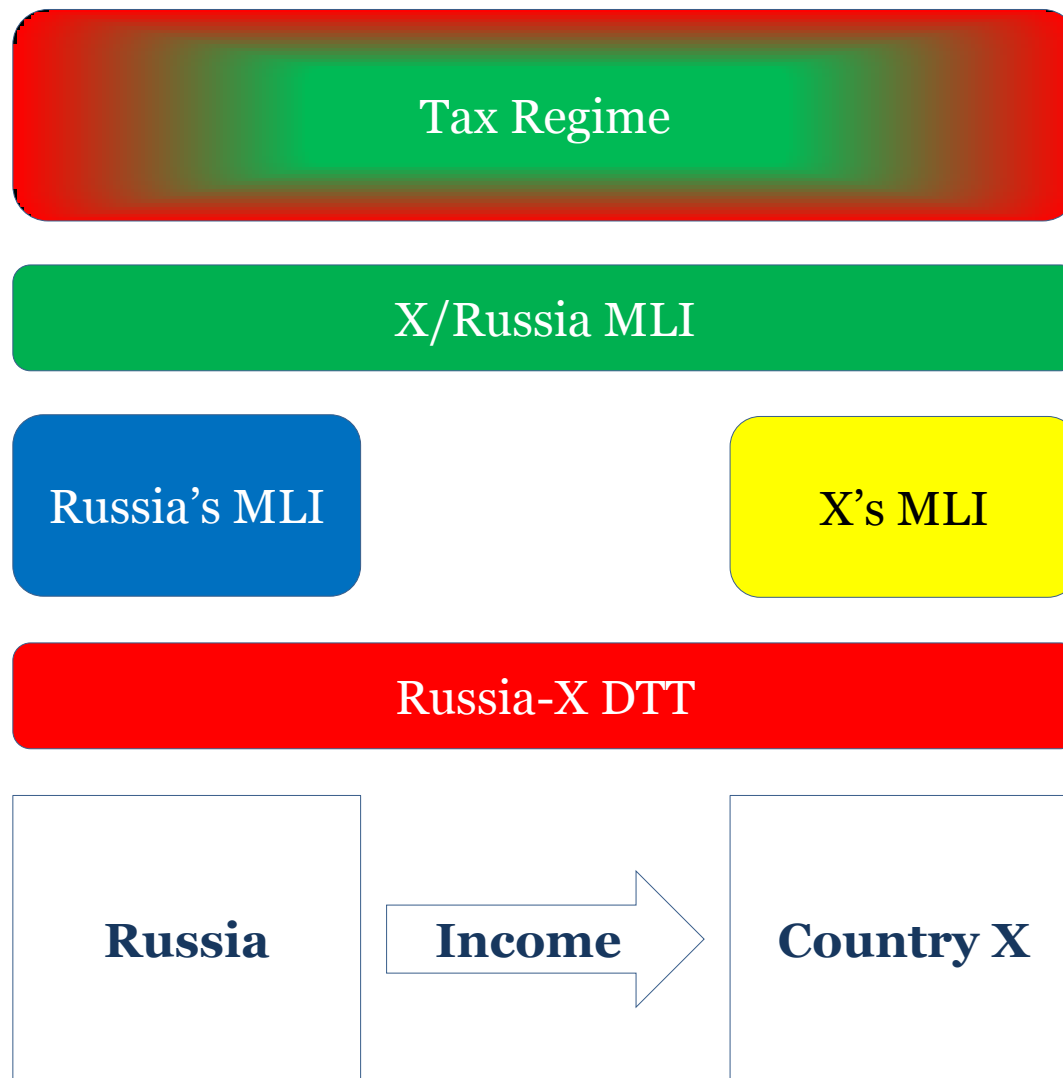
## *How does it work?*



## *How does it work?*



## *How does it work?*



## *Treaty Abuse*

### Issues to address

1. No purpose clause – no proof of abuse
2. Treaty abuse
3. Dividend transfer transactions
4. Avoidance of RE-reach taxation
5. PE in a 3<sup>rd</sup> country – avoidance tool

### Suggested approach

1. Define the purpose
2. PPT or LoB
3. 365 days holding period
4. 365 test period
5. 60% of ETR text



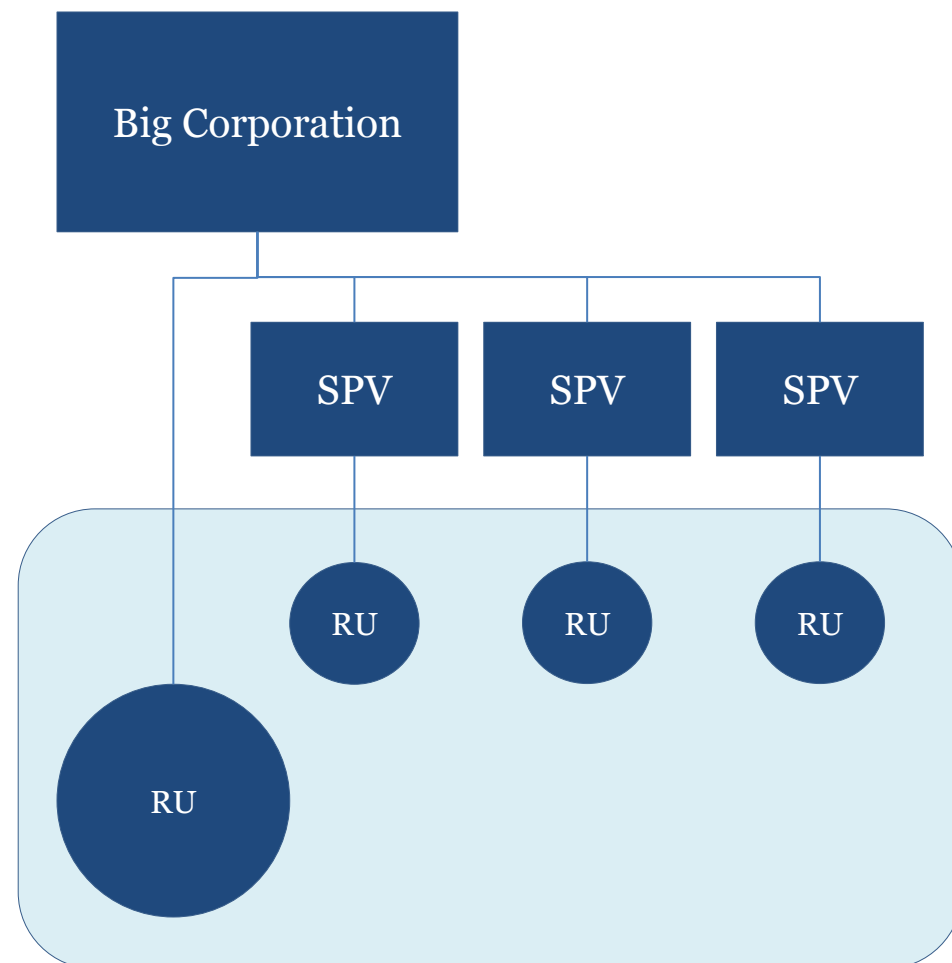
# Artificial Avoidance of PE

## Issues to address

1. Commissionaires techniques
2. Fragmentation of activities
3. Splitting up the contracts

## Suggested approach

1. “Dependent agent” improvements
2. No fragmentation provisions
3. No split provisions





# **Vladimir Golishevskiy**

## **Deputy Head of Standards and International Cooperation Department of the Federal Tax Service**

### ***RUSSIA IN INTERNATIONAL TAX COOPERATION: IMPLICATIONS FOR BUSINESS***



# UPCOMING CHANGES IN THE TAXATION OF COMPANIES

**Anton Nikiforov**  
Pepeliaev Group





- Payment of taxes by third parties and the collection of arrears
- Increasing the rates of fines
- Article 105.14 of the Russian Tax Code



- VAT on the granting of suretyship
- VAT clawback when a subsidy is received
- Rules for identifying the location where services (work) are provided have been made more specific
- Abolition of the federal level tax exemption with respect to movable property



- Changes in article 266 of the Russian Tax Code
- Thin cap rules
- Limitations on accounting losses



# **DEVELOPMENT OF THE RUSSIAN TAX SYSTEM: RESULTS OF 2016 AND PERSPECTIVES**

## **SESSION 2**



# **BENEFICIAL OWNER OF INCOME: PRACTICE DEVELOPMENT**

## **TAX CONTROL – NEW RULES OF AN OLD GAME**

## **COURT CASES THAT FORM NEW TRENDS**

### **KEY ISSUES IN BRIEF:**

- Special investment contracts**
- VAT on e-commerce**
- Draft law on restricting audit secrecy in tax relations**

# Experts:

**Victor Kalgin, *EY***

**Alexander Erasov, *Goltsblat BLP***

**Dzhangar Dzhalchinov, *Dentons***

**Nina Goulis, *KPMG***

**Arseny Seidov, *Baker&McKenzie***

**Alexander Kulikov, *Alinga Consulting***



# Beneficial owner of income: recent trends

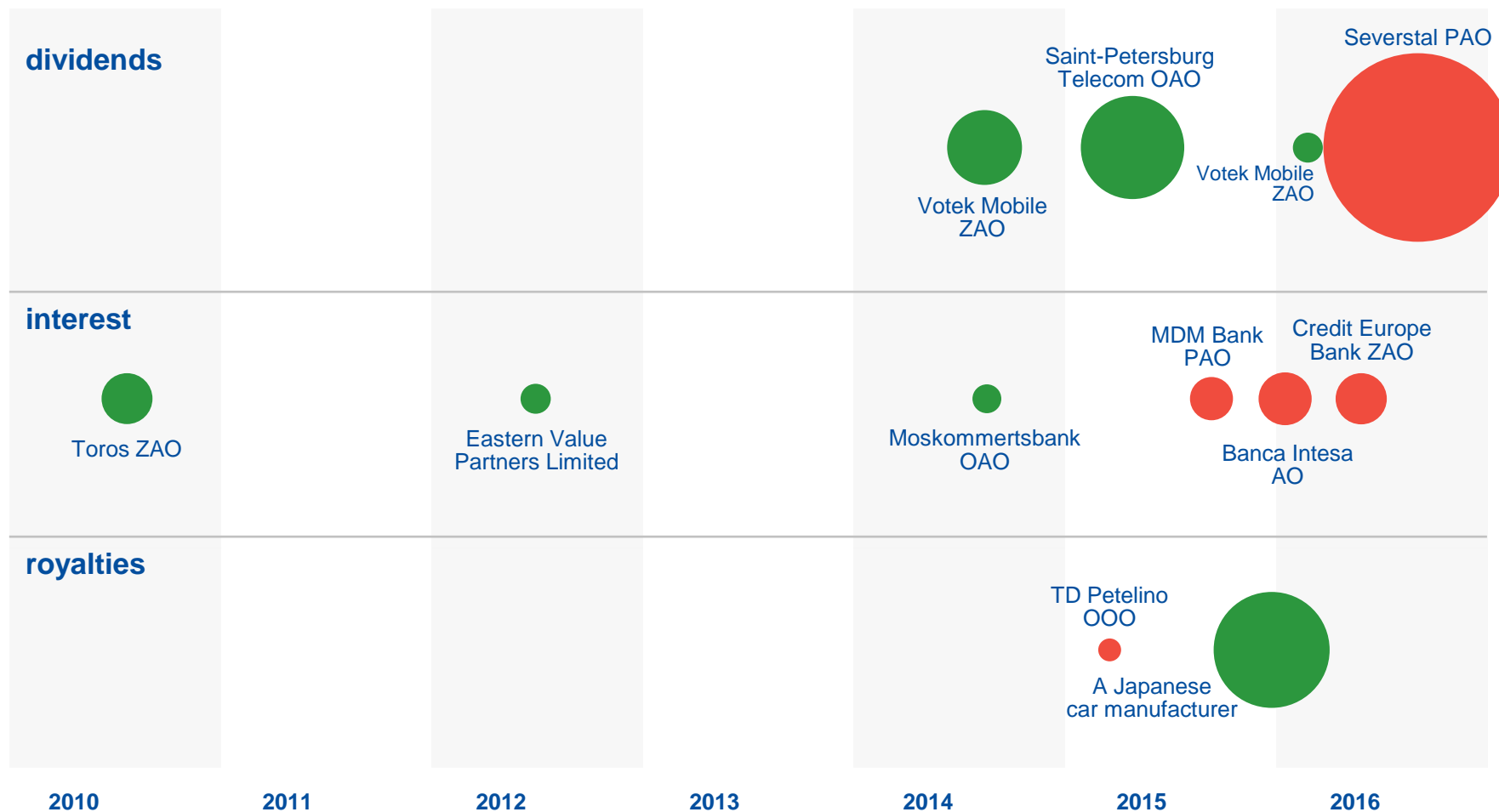
**Victor Kalgin**  
EY





# Current practice

● 50 million roubles



## **Why is it important? Four reasons**

1. Problems occur more and more often
2. The value at stake is high
3. More and more negative cases
4. New rules next year: a confirmation is obligatory

## Which factors are important?

**“Mirror”  
cash flows**

Assets of the  
foreign  
company

Decision  
-making  
process

Expenses of  
the foreign  
company

Business  
rationale  
of the  
structure

Directors'  
indemnities

Same directors  
in different  
companies

**Contracts  
provisions**

Nominal and  
real functions

**Nominal or  
real  
directors?**

Etc.



# TAX CONTROL – NEW RULES OF AN OLD GAME

**Alexander Erasov**

Goltsblat BLP

Goltsblat BLP LLP is the Russian practice of Berwin Leighton Paisner (BLP), an award-winning international law firm with offices in London, Moscow, Abu Dhabi, Beijing, Berlin, Brussels, Dubai, Frankfurt, Hong Kong, Paris, Singapore, Tel Aviv and Yangon

## TOP TAX CONTROL TRENDS

- ✓ Tax bodies and courts take a new (**more aggressive**) approach to tax disputes
- ✓ **Deeper investigation** of relevant facts, documents and legislation
- ✓ **International exchange** of information
- ✓ Number of **question marks** has increased significantly
- ✓ Increasing involvement of **law enforcement bodies**
- ✓ Rise in **criminal cases**
- ✓ Progressive application of **personal material liability**
- ✓ Thresholds for tax crimes exceeded...  
**... but still too low for big business**
- ✓ Frequent application of non-tax articles of the Russian Criminal Code

**THE GAME  
HAS CHANGED**

## THE MOST TURBULENT AREAS

Relations with bad  
faith counterparties

Intragroup  
transactions  
(including "cost  
sharing")

"Unreliable  
documents"

Failure by companies  
to fulfil tax agent  
obligations

**VAT RECOVERY**  
**!!!**

Recovery of taxes  
from other  
companies  
and individuals

Use of tax benefits

Tax refund  
???

**Questionings of  
witnesses**

## HOW TO DEFEND YOURSELF

- Tighten requirements for **transparency** of operations and paperwork
- Improve **compliance** procedures
- Elaborate and apply effective **policies** for working with contractors
- Focus on the most **turbulent** areas
- Be effective and careful in providing **information**
- Instruct** non-tax staff
- Do not miss time and opportunities - **pre-litigation** is not just a formality!!!
- Prepare proper **defence files** in advance

## DEFENCE FILE

- ❑ Think about evidence beforehand (never confine yourself to formalistic arguments)

### At least check that:

- ✓ Proper **tax due diligence** is performed
- ✓ There is **evidence** that operations are **real**
- ✓ **Prices** correspond to their substance and scope
- ✓ Actual relations **correspond** to what the contract says
- ✓ There are documents signed with **ensured authentic signatures**





# Court cases that form new trends

**Dzhangar Dzhalchinov**  
Dentons

## ***Taxation of severance pay***

### ***Parliament Production***

- RF Supreme Court Ruling No. 305-KG16-59-39 of 23/09/2016
  - Can be deducted, but business purpose must be substantiated

### ***Murmansk Trawler Fleet***

- North-West District Commercial Court Resolution No. A42-7562/2015 of 27/10/2016
  - The payments are not provided for by the RF Labor Code, therefore they are subject to income tax
- RF Supreme Court - ?

### ***MRSK of Siberia***

- West-Siberia District Commercial Court Resolution No. A46-7158/2015 of 29/07/2016
  - The payments are not provided for by the RF Labor Code, therefore they are subject to social security contributions
- RF Supreme Court – the resolution overturned

## ***Validity of expenses***

### ***Kapital Management Company***

- Moscow District Commercial Court Resolution No. A40-118598/15 of 19/07/2016
- An employee bonus is a nondeductible expense if
  - The bonus amount is substantial (and)
  - The bonus does not correspond to a specific work contribution of the employee to the entity's activities



# ***Superpowers of the Federal Tax Service of Russia***

## ***Chistyulya***

- Ninth Commercial Court of Appeal Resolution No. A40-36957/16 of 5/12/2016
  - Is the Federal Tax Service entitled to overturn a department's decision (which, in turn, overturned a tax inspectorate's decision on a taxpayer's appeal) as part of monitoring the department's performance (at its own initiative)?



# Special investment contracts – current status

**Nina Goulis**

**Partner, Tax and Legal  
KPMG Russia and CIS**

## Special Investment Contracts – incentive opportunities

Special Investment Contracts (SPICs)	
<b>Conditions</b>	<ul style="list-style-type: none"> <li>— Capital investments – not less than 750 mln rubles at federal level that could be changed by regional government</li> <li>— Business activity in certain industries</li> <li>— Permitting procedure (required a set of specific documents, should go through specific legal procedures)</li> </ul> <p><b>Valid Term of SPICs:</b> operational profit plus 5 years but not more than 10 years in total</p>
<b>Probable tax benefits</b>	<ul style="list-style-type: none"> <li>— <b>Corporate Income Tax (CIT)</b> <ul style="list-style-type: none"> <li>– Federal budget: 0% for 10 years (applicable only when a company follows to specific conditions)</li> <li>– Regional budget: could be decreased till 0 % (set up by a regional government)</li> </ul> </li> <li>— <b>Property Tax</b> <ul style="list-style-type: none"> <li>– Tax rate and term set up by a regional government</li> </ul> </li> </ul>
<b>Tax incentives</b>	<p><b>Easier access to a state order</b> – an ability to be a provider of goods produced in accordance with the SPICs without a tender</p> <p><b>Russian Product</b> – quick and simplified procedure to get a status of the ‘Russian producer’</p> <p><b>Subsidies</b>– easier access to government subsidies (applicable for specific industries and only when a company follows to specific conditions)</p> <p><b>Opportunity to sign a lease of state or municipal land agreement</b> without competitive bidding</p>
<b>Other incentives</b>	<p>Guarantee not to increase overall tax burden since a SPIC agreement were signed</p>

## SPIC – tax incentives issues

- ✓ Criteria is 90% of total income should be received according to SPIC conditions
- ✓ Impossible to apply CIT benefits at federal level if regional law does not support SPIC and vice versa
- ✓ Uncertainty regarding a possibility of using the benefits that have not been established by law, but could be introduced in the future
- ✓ Restriction to use an incentive when the business activity is at different production sites
- ✓ Issues of using the current incentives (free economic zone / regional legislation for investment projects) vs SPIC benefits
- ✓ CIT benefits can be applied till 2025



The Government Resolution "On Amending Resolution of the Russian Government dated 16 July 2015 № 708" On special investment contracts for specific industries"

NB! – is amending



The Federal Law from 23.05.2016 N 144-FZ "On Amendments to Parts One and Two of the Tax Code of the Russian Federation" set up CIT benefits

NB! – is amending



# **VAT on E-Commerce:**

## **Practical Aspects & Developments**

**Arseny Seidov**

*Baker McKenzie, Partner*





## *Overview of new VAT regime on ESS*

1. Starting from January 1, 2017, the place of supply of certain electronic services ("**ESS**") is determined as customer's location (B2C & B2B)
2. The ESS are defined as "services provided automatically through the Internet with the use of information technologies" and include broad range of services
3. VAT exemption for software use licenses still effective, but may be revisited
4. Non-resident suppliers of ESS to Russian customers, as well as marketplaces and payment intermediaries (aggregators), will be required to tax register in Russia, pay and report VAT on ESS
5. Liability for lack or late tax registration (10% of gross income for period w/o required tax registration)
6. Online tax registration and electronic VAT filing (VAT portail available in test mode <http://lkio.gnivc.ru>)
7. No-PE principle for non-resident suppliers of ESS, but greater long-term tax nexus with Russia & other grounds for PE recognition (e.g., server PE)

## *Distinguishing between B2B & B2C sales*

1. Russia is deemed as the place of supply of ESS for VAT purposes:
  - ✓ for B2B customers – according to the place of state registration;
  - ✓ for B2C customers – according to at least one of the criteria:
    - individual's place of residence is in Russia;
    - payment for electronic services is made through a bank or electronic payment operator located in Russia;
    - customer's network (IP) address is registered in Russia;
    - a telephone number with Russia's country code is used to purchase or pay for ESS
2. The Law is silent on differentiation of the status of a customer (business or consumer)
3. Form of supporting documentation: practical considerations
4. B2C tie-breaker rules for situations where B2C customer is presumed located in two countries for VAT purposes
5. Transaction register to be submitted electronically (recommended form expected)

## *Disputable issues and expected developments*

1. Communicating policy on resolving customer location conflicts to marketplaces and payment intermediaries (aggregators)
2. Payment intermediaries v. payment processors – who is required to act as tax agent?
3. Customer status (B2B or B2C) verification and supporting documentation – who bears the burden of proof?
4. Non-resident suppliers should maintain transaction register for B2C supplies with information on the cost of services and compliance with criteria for customer location determination
5. Reporting considerations, compliance & enforcement issues
6. Impact on retail sector; sale of prepaid cards, content codes, virtual accounts and e-wallets refills
7. **VAT regime for online sale of goods** – current initiatives



# Draft Law on Limiting Audit Secrecy Relating to Tax Matters

**Kulikov Alexander**

Director

Audit and Tax Department

Alinga Consulting Group

# AUDIT SECRECY PRESENT DAY



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## Administration of Tax Control

The following are not permitted with regard to information  
collected during an audit:

Collection

Storage

Use

Distribution



# DRAFT FEDERAL LAW ON REMOVAL OF AUDIT SECRECY



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Russian Ministry of Economic Development  
November 15, 2016

**Positive decision based on the  
results of a regulatory impact  
assessment**

Government of the Russian  
Federation



# WILL AUDIT SECRECY BE REMOVED IN 2018...?

The following will be permitted with regard to information collected during an audit:

Collection

Storage

Use

Distribution



Tax authorities can request:

Documents received by an auditor through:

- conducting an audit;
- rendering other services related to audit

Such documents are needed for:

- calculation and payment of taxes;
- withholding of taxes and insurance contributions

**NB!**

**Only applies IF the indicated documents (information) are not submitted by the taxpayer in the prescribed manner.**



# **Vadim Zaripov**

## **Deputy Chairperson of the AEB Taxation Committee, Pepeliaev Group**

### ***CLOSING REMARKS***





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# Q&A