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RECENT DEVELOPMENTS IN INTERNATIONAL TAXATION

RUSSIA

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1 MLI

Russia signed the Multilateral Instrument together with the other 67 countries in 2017 and it was ratified in May 2019. 71 Double Taxation Treaties (DTT) were chosen by Russia to be covered by MLI, including most popular DTT with Cyprus, Hong Kong, Ireland, Luxembourg, the Netherlands and Singapore. DTTs with Brazil, Japan, Switzerland and several other countries will not be affected.

Russia accepted most of the initiatives under MLI including Simplified Limitation of Benefits (SLoB) provision while the most contracting jurisdictions have chosen only Principal Purpose Test. Thus, the SLoB will not be applicable to the most of Russia's DTTs.

The optional provisions accepted by Russia include:

- (A) 365-day holding requirement for tax relief for dividends and capital gains;
- (B) Taxation on the sale of shares in property-rich companies;
- (C) Expanded application of the rules of permanent representation to commissionaires and agents working exclusively with one principal, etc.

It is important that the arbitration procedure provision was not upheld, therefore the mutual agreement procedure will remain the only way to resolve disputes between Russian and foreign competent authorities.

It is expected that the new rules will be applicable to Russian Double Taxation Treaties from January 1, 2020 (on the condition that the respective contracting jurisdiction ratified MLI).

2 CRS

The Common Reporting Standard is an important element of the international partnership in the field of compliance with the requirements of tax legislation by individuals and organizations. Russia as a proactive member of G20 and Global Forum on Transparency and Exchange of Information follows this trend, rapidly changing its laws and regulations for implementation of the exchange in order to comply with the OECD recommendations.

In 2018, the Government passed the Decree № 693 "On implementation of the International Automatic Exchange of Financial Information with Competent Authorities of Foreign States (Territories)", which established the requirements for the financial organizations regarding identification of clients and provision of the relevant financial information to the Federal Tax Service.

In July 2018, the Federal Tax Service collected the first information for 2017 financial year regarding bank accounts of non-Russian residents opened with the Russian banks. The first exchange of information under CRS took place in September 2018.

At the beginning of March 2019, the Federal Tax Service reported the first results of the exchange: the information about the Russian tax residents' accounts in 58 jurisdictions, including the British Virgin and Cayman Islands, Mauritius and other offshore and low-tax jurisdictions, was transferred to Russia.

3 Double Tax Treaties

The new Double Tax Treaties (“DTT”) with Japan and Ecuador apply from January 1, 2019. The updated DTT with Belgium was ratified on May 23, 2018 but it has not entered into force yet. In addition, the protocols to the DTTs with Austria and Sweden were ratified but they have not entered into force as of May 2019.

On January 30, 2019 the Russian Ministry of Finance, being the competent authority responsible for the mutual agreement procedure (MAP), first time published the official guidance on the application of MAP. The guidance is mainly based on the standard provisions contained in Russian DTTs but it regulates some important technical issues concerning MAP process: the procedure of the MAP request, list of documents to be filed, rights and obligations of persons to whom the DTT applies, etc.

4 New VAT obligations for the non-Russian providers of B2B electronic services

Starting January 1, 2017, non-Russian companies providing electronic (online) services (e.g. provision of rights to use software, streaming music, films, gaming services, hosting, website and webpage support, etc.) to Russian-based individuals are obliged to register with the Russian tax authorities for the purpose of paying Russian VAT. The similar requirements are applied to non-Russian intermediaries involved in settlements with such individuals.

In accordance with the changes that came into force from January 1, 2019, the above-mentioned obligations were extended to non-Russian companies and intermediaries providing electronic services to the Russian B2B market (legal entities and individual entrepreneurs).

As Russia is not a member of OECD, these obligations were adopted despite OECD’s recommendations not to extend them to B2B market.

Besides, there is no minimum threshold of the value of the provided services, which triggers the registration obligation. Thus, starting 2019, non-Russian providers of electronic services are obliged to register with the Russian tax authorities for VAT purposes even if the value of the provided services is insignificant. Registration is obligatory even if the electronic services are VAT-exempt in Russia (e.g., provision of rights to use software and databases under the license agreements).

The registration procedure is done online and is technically quite simple, however, the foreign providers are obliged to file VAT declarations on a quarterly basis, calculate and pay VAT, if applicable. Further, the Russian tax authorities have the right to perform tax audits of the filed tax declarations and they may request additional information and documents to confirm the correctness of VAT calculations.

If non-Russian providers/ intermediaries fail to register with the tax authorities, they could be subject to various tax penalties, while certain negative consequences may arise for the Russian customers buying the electronic services (e.g. problems with VAT refund, etc.).

5 Transfer pricing

Significant number of domestic transactions was excluded from the transfer pricing (TP) rules by the Federal Law № 302-FZ of August 3, 2018 that amended the criteria to consider the transactions as controlled.

In addition, the new 60 million rubles (approximately 900 000 US dollars) threshold was introduced for cross-border transactions between the related parties to consider them as controlled for the transfer pricing purposes.

Before these changes, there were no thresholds and all cross-border deals between related companies were under the scope of Russian TP rules irrespective of the amount of income from these transactions.

6 Special Administrative Regions ("SARs")

A package of laws was passed in 2018 to establish the special administrative regions on Islands Russkiy (located in the Far East) and Oktyabrskiy (located in Kaliningrad region) in Russia, so-called "*Russian offshores*".

Foreign companies registered in SAR as "international company" ("IC") are able to apply attractive tax (e.g. zero tax on certain dividends and capital gains) and currency regulation regimes. However, the companies must meet a number of criteria to obtain the status of IC, e.g. investing at least RUB 50 million in the Russian economy.

The main idea of creating SARs was to provide additional options for return of the Russian funds held abroad, especially for those that may be subject to foreign (mainly US or EU) sanctions, and at the moment it is quite specific instrument which is unlikely to be widely used by foreign investors. At the same time, there have been some discussions on the possible changes to the SAR laws, which can make them attractive and useful for more investors.