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**Recent Developments in International Taxation**

**Russian Federation**

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## **1. RECENT HIGHLIGHTS**

### **1.1 Direct and Indirect Taxes**

#### **1.1.1. Corporate income tax. Interest income on bonds**

Since July 2012 interest income shall be the subject of withholding tax on income except:

- interest income on government bonds of the Russian Federation, government bonds of the Regions of the Russian Federation and municipal bonds;
- interest income paid by Russian companies on the traded bonds issued by these entities in accordance with the laws of foreign countries;
- interest income paid by Russian entities to foreign entities from debt claims if both of the following conditions are met:

a) debt of payer income arose in connection with the issuing of traded bonds by the foreign entity; and

b) foreign entity at the date of payment of the interest income have a permanent residence in the states with which the Russian Federation has existing contracts treaties governing the avoidance of double taxation of income.

#### **1.1.2. Corporate property tax**

Objects of movable property accepted for accounting as fixed assets after January 1, 2013 are not subject to corporate property tax.

#### **1.1.3. VAT**

Since January,1, 2013 services provided by registrars, depositories (including specialized depositories and central depository), dealers, brokers, managing securities investment fund management companies, mutual funds and pension funds, clearing organizations, organizers of trade on the basis of licenses for the relevant activities and many other services connected with the stock, commodity and currency exchanges are exempted from VAT.

## **1.2 Treaty Developments**

### **1.2.1 Argentina**

On October, 2, 2012, the Double Tax Treaty between Russia and Argentina (10.10.2001) was ratified by law. So this treaty was entered into force and applied from 01.01.2013.

#### **Dividend taxation**

Dividends may be taxed in the contracting state of which the company paying the dividends is a resident and according to the laws of that state, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- 5% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends;
- 10% of the gross amount of the dividends in all other cases.

### **Interest taxation**

Interest may be taxed in the contracting state in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5% in case of loans between banks of the contracting states and 10% of the gross amount of the interest in all other cases.

### **Royalties taxation**

Royalties may be taxed in the contracting state in which they arise and according to the laws of that state, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15% of the gross amount of the royalties.

## **1.2.2 Latvia**

On October, 2, 2012, the Double Tax Treaty between Russia and Latvia (10.12.2010) was ratified by law. So this treaty was entered into force and applied from 01.01.2013.

### **Dividend taxation**

Dividends may be taxed in the contracting state of which the company paying the dividends is a resident and according to the laws of that state, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- 5% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends and the capital invested by this beneficial owner is not less than 75,000 USD or the equivalent amount in the national currency of a contracting state;
- 10% of the gross amount of the dividends in all other cases.

### **Interest taxation**

Interest may be taxed in the contracting state in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 % of the gross amount of the interest. Interest paid under agreements between Russian government and Central Bank of Argentina or government of Argentina and Central bank of Russia are not taxable.

### **Royalties taxation**

Royalties may be taxed in the contracting state in which they arise and according to the laws of that state, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 5% of the gross amount of the royalties.

### **1.2.3 Switzerland**

In October 2011, Russia and Switzerland agreed a protocol to the income tax treaty between the two countries. On October, 2, 2012 it was ratified. The protocol to the 1995 Russia-Switzerland income tax treaty, among other things: eliminates withholding tax on interest (previously, subject to a 5 or 10 percent withholding rate), subject to certain limitations; expands the category of dividends eligible for zero rate of withholding tax; expands the category of capital gains subject to the withholding in case of selling of shares.

The protocol also provides for mutual assistance in the collection of taxes and full exchange of taxpayer information between the tax authorities of each country.

### **1.2.4 Luxembourg**

In November 2011, Russia and Luxembourg agreed a protocol to the income tax treaty between the two countries. On December, 30, 2012 it was ratified by Russia but has not entered into force. The protocol to the 1993 Russia-Luxembourg income tax treaty would, among other things: decrease withholding tax on dividends to 5% for qualified cases (previously, subject to a 10 percent withholding rate); expand the category of capital gains subject to the withholding in case of selling of shares.

The protocol also provides for mutual assistance in the collection of taxes and full exchange of taxpayer information between the tax authorities of each country.

### **1.2.5 Armenia**

In October 2011, Russia and Armenia agreed a protocol to the income tax treaty between the two countries. On February, 1, 2013 it was ratified by Russia but has not entered into force. The protocol to the 1996 Russia-Armenia income tax treaty would, among other things: change the requirements for applying withholding tax on dividends to 5% (capital invested by the beneficial owner shall be not less than 75,000 USD or the equivalent amount in the national currency of a contracting state); establish 10% withholding tax on interest; expand the category of capital gains subject to the withholding in case of selling of shares.

The protocol also provides for mutual assistance in the collection of taxes and full exchange of taxpayer information between the tax authorities of each country.

## **2. FUTURE DEVELOPMENTS**

### **2.1 Main focuses of the tax policy**

The Russian Federation is making efforts in the direction of countering tax evasion by using low-tax jurisdictions. For these purposes Russian government is preparing the introduction of the principle of taxation of undistributed income of foreign-controlled companies. Also planned to introduce a obligation for Russian companies or companies who are tax residents of the Russian Federation, the duty point in the tax returns all of its foreign affiliates.

Also tax legislation will be improved by the concept of tax residence of the organizations on the basis of several criteria similar to those used in international tax treaties of the Russian Federation.

In addition to these changes legislation will also be amended to provide the actual concept of the income recipient (the person having the beneficial owner of the income), which will also use some tools countering tax evasion in international tax relations.

## **2.2 Future Administrative changes**

A number of possible changes aimed at providing tax authorities the right to receive additional information necessary for tax control, particularly from banks. It is expected that future laws include to the list of information provided by banks information about the availability of deposits on the cash balances in accounts (deposits) and to provide for the provision of the relevant statements by banks on deposits (deposits).

## **3. COURT CASES**

### **3.1 Eastern Value Partners Limited**

Eastern Value Partners Limited and HypoReal East Limited (Republic of Cyprus) signed a loan agreement for the purchase of an office building, located at Moscow. It was found that the repayment of the loan and the payment of interest Eastern Value Partners Limited produced to the third party - Exelor Ltd (British Virgin Islands).

Court stated that Eastern Value Partners Limited wasn't obliged to withhold taxes on income on the basis of Russia-Cyprus double tax treaty because transit nature of the cash flow is not a basis for imposing on taxpayer the obligation to withhold tax as it does not preclude the application of legal relationship arisen double tax treaty taxation.