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REFORM OF INTERNATIONAL TAXATION IN RUSSIA

Abstract

This contribution deals with significant changes in regulation of cross-border taxation in Russia that have been introduced since 2014 mainly due to the impact of the governmental policy of deoffshorization aimed at fighting the offshore character of Russian economy. At the same time participation in the OECD BEPS Project also influenced the international tax landscape in Russia. The analysis of the key substantive and procedural rules that were introduced in the course of the international tax reform in Russia is the key goal of the article. The author covers controlled foreign companies rules, management test for corporate tax residence, beneficial ownership concept, automatic exchange of information and key changes in the tax treaty network. The author aims to show steps that were taken by Russia in its reform of international taxation in order to confirm the hypothesis that in cross-border taxation Russia uses the widespread mechanisms and soft law recommendations while going its own way and often setting its own versions of the main elements of the international taxation landscape. Another important issue under consideration is the balance between unilateral, bilateral and multilateral regulation of international taxation in Russia.

Key words: Tax law, international tax law, controlled foreign companies, beneficial ownership, automatic exchange of information, MLI, BEPS

JEL Classification: K330, K340

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1. Introduction

In recent years Russia has undergone significant changes in regulation of international taxation, mainly due to the impact of the governmental policy of so-called “deoffshorization” aimed at fighting the offshore character of Russian economy. These processes were parallel to the work on the OECD BEPS Project, but since the end of 2015, when BEPS Project entered its implementation phase, Russia has made several steps towards joint action of the international community to increase transparency and exchange of information and to address weaknesses of the international tax system that create opportunities for certain tax avoidance strategies.

The analysis of the key substantive and procedural rules that were introduced in the course of the international tax reform in Russia is the key goal of the article. The author aims to show steps that were taken by Russia in its reform of international taxation in order to confirm the hypothesis that in cross-border taxation Russia uses the widespread mechanisms and soft law recommendations while going its own way and often setting its own versions of the main elements of the international taxation landscape. Another important issue under consideration is the balance between unilateral, bilateral and multilateral regulation of international taxation in Russia – does Russia move towards multilateralism in international taxation or is the regulation more likely to remain unilateral and bilateral?

2. International taxation reform in Russia: brief overview

In 2013 OECD launched its BEPS Project - following the release of the report “Addressing Base Erosion and Profit Shifting” in February 2013, OECD and G20 countries adopted a 15-point Action plan to address base erosion and profit shifting in September 2013. Nearly at the same time in Russia the work on the governmental policy of deoffshorization was pushed by the President of the Russian Federation in his messages to the Federal Assembly in 2012 and 2013. It was in the Presidential Address to the Federal Assembly on 12 December 2013 when Vladimir Putin pronounced his famous words “if you want to use offshores, go ahead, but the money has to come here” and made a proposal to introduce special rules for taxation of controlled foreign companies – proposal that launched the active phase of the governmental policy of deoffshorization.

The key goals of Russia’s international tax policy since 2014 are (1) to tax funds that are held offshore, (2) to counteract tax avoidance in cross-border situations and (3) to broaden international tax cooperation and tax transparency.

At the beginning of 2014 there were just several measures in Russian tax legislation that could help to fight base erosion and profit shifting, such as, for example, transfer pricing [Ivanova et al. 2017] and thin capitalization [Mikhaylova, Akhonina 2016] rules, and a lot was to be done to fight offshore tax evasion. Over the last six years numerous substantive and procedural provisions set both in the national legislation and international treaties have entered into force in Russia in the course of the country's realization of its policy of deoffshorization.

Among national rules it is worth noticing rules for taxation of controlled foreign companies, management test for corporate tax residence, domestic definition of beneficial owner and application of look-through approach, three stages of voluntary disclosure program (also known as "amnesty of capital"), tax-free liquidation of foreign companies and unincorporated structures, and new rules on transfer pricing documentation. Many of these rules were introduced to the Tax Code by the so-called deoffshorization law – federal law of 24 November 2014 No. 376-FZ and have been in force since 1 January 2015.

International tax treaties network has also changed – Russia has finally ratified the Convention on Mutual Administrative Assistance in Tax Matters, joined the automatic exchange of information (both for financial accounts information and country-by-country reports), signed and ratified the Multilateral Convention to Implement Treaty Related Measures to Prevent BEPS (MLI).

The most important of these rules (both substantive and procedural) are described further in the article.

3. Controlled foreign companies rules

The deoffshorization law of 2014 introduced two legal instruments in order to tax funds that are held in low tax jurisdictions – controlled foreign companies (CFC) rules [Tax Code, ch. 3.4, art. 309] and management test for corporate tax residence [Tax Code, art. 246.2]. The key difference between these two mechanisms concerns the role of a foreign company – under CFC rules the role of the taxpayer belongs to the controlling person who pays taxes on undistributed profit of the controlled foreign company, and under management test for corporate tax residence it is the foreign company which becomes the taxpayer with liability to pay taxes in Russia on the worldwide income.

Under Russian CFC rules the undistributed profit of CFC is recognized for Russian tax purposes as income of the controlling person (Russian tax resident – individual or company),

taxable depending on the status of the controlling person by corporate income tax (at 20%) or individual income tax (at 13%). The detailed description of Russian CFC rules is beyond the scope of the article and can be found in Russian literature [Starzhenecskaja 2018]. In this article we would like to briefly describe the scope of Russian CFC rules with the help of three key features of CFC rules as defined by B.J. Arnold – (1) the definition of a CFC; (2) the level of foreign tax on a CFC; and (3) the nature of income earned by the CFC that is attributed to its resident shareholders [Arnold 2019: 631, 635–638].

Russia uses a very broad definition of a CFC. The status of a controlled company may be acquired by a foreign company or unincorporated structure, that is funds, trusts, partnerships and other forms of collective investment and fiduciary management. The definition of control is also quite extensive – Russia applies both legal and economic control tests as supplemented by de facto control test. In particular, the control may be based on direct or indirect participation in the company, participation in a management agreement in respect of the company or any other facts regarding relationships between the resident and the company. In general, 25% of shares (50% for the 2015) is sufficient, with special rule of 10% being established for the cases when Russian residents hold more than 50% in the company. Thorough rules are set to define control over unincorporated structures and depending on the circumstances allow to regard both the founder of the structure and other persons as being in control of the structure.

In defining the level of foreign tax on a CFC Russia uses basic global approach which is supplemented by the list of exemptions – (1) for income that is subject to a minimum level of a foreign tax (equal to 3/4 or more of the effective Russian tax rate) and (2) for income originated in member-states of the Eurasian Economic Union. There is no special blacklist of low-tax countries for CFC rules purposes, but, as exemption from the CFC rules for a minimum level of a foreign tax is granted only in respect of the states that have tax treaties with Russia and ensure exchange of information, the existing black-list of countries that don't ensure exchange of information for tax purposes is of importance for taxation of CFCs. Except for the reference to member-states of the Eurasian Economic Union there is no traditional white list of high-tax countries for CFC purposes.

The scope of income of a CFC that is attributable to the controlling person is also quite broad. CFC rules apply to all the income of a CFC with a number of exemptions – e.g., distributed dividends, some Russian-sourced types of income if the controlling person is the beneficial owner of the income. Still some of the companies are totally exempt from the CFC rules – non-profit organizations that due to their personal law don't distribute income to shareholders or other stakeholders, active companies (with predominantly active income – the general

threshold is 80% of active income), international holding companies, banks, insurance companies and some others. There is also a non-taxable minimum of 10 million rubles (50 million rubles for 2015, 30 million rubles for 2016).

The first results of CFC rules application became available in the end of 2017 when Russian taxpayers filed notices about their CFCs and paid income taxes on their CFC's financial result for the year 2015. According to the Federal Tax Service in 2017 taxpayers submitted 4,000 notices about CFCs that cover more than 10,000 foreign companies. The CFC rules resulted in 6 billion rubles of taxes – 3.2 billion paid by companies and 2.8 billion paid by individuals. This result seems to be quite modest as CFC rules gave Russian consolidated budget around 0.01% of individual and corporate tax in 2017. In 2018 and 2019 the tax revenue from CFCs remained approximately on the same level.

Reasons of these modest results require in-depth analysis that is beyond the scope of the article, but evidently introduction of CFC rules in 2014 couldn't have been ignored by the companies and other stakeholders that had to make decisions on their group structuring: some Russian tax residents decided to use the possibilities of tax-free liquidation and got rid of artificial offshore structures, some chose more complicated schemes, and some opted to change tax residence (not a difficult task as Russia applies only 183-days of presence test for individuals). The issue of compliance with CFC rules also requires attention.

At the moment the future of Russian CFC rules seems to be changing dramatically – on June 23, 2020, in the Address to the nation President of Russia Vladimir Putin characterized CFC rules as “fairly complicated, clumsy and even inextricable” and, in order to create a stimulus for the development of modern and responsible business in the Russian jurisdiction, suggested simplifying CFC rules radically by letting Russian tax residents pay a fixed tax of five million rubles a year without additional reporting.

4. Management test for corporate tax residence

Together with CFC rules new rules on corporate tax residence were introduced in 2014 [Tax Code, art. 246.2]¹. Until 2015 Russian tax legislation didn't use terms “tax residence”, “tax resident” and “tax non-resident” in respect to companies. Criteria of tax residence were defined only for individuals, however this doesn't mean that all companies were taxed on the same basis.

¹ For more detailed information about Russian corporate tax residence rules (national legislation and tax treaties) refer to Kilinkarova et al. 2018: 505–524.

For the purposes of corporate income taxation Russian tax legislation used division of legal entities into Russian and foreign companies on the basis of a formal incorporation criterion. Russian companies were subject to unlimited tax liability on their worldwide income, while taxation of foreign companies differed depending on existence of a permanent establishment in Russia.

In order not to rewrite a huge massive of rules in the Tax Code on Russian and foreign companies a debatable legal technique was used – all rules on taxation of Russian and foreign companies were left untouched, and for the purposes of corporate income taxation foreign companies that are recognized to be Russian tax residents are deemed to have the same status as Russian companies.

Under current legislation the following companies are regarded as Russian tax residents – (1) Russian companies, (2) foreign companies recognized as Russian tax residents under double tax treaties - for the purposes of application of such treaties, and (3) foreign companies with place of management in Russia, if other rules are not set in Russia's tax treaty.

Companies are defined as Russian or foreign on the basis of the test of incorporation.

Russia is deemed a place of management of the foreign company if at least one of the following conditions is fulfilled with respect to the company – (1) the executive body (executive bodies) regularly carries out its activities in relation to this company from the territory of Russia, with activities not being regarded as regular if this activity in Russia is significantly less than in any other state; or (2) the persons authorized and responsible for planning, directing and controlling the activities of the company mainly carry out their activities in the form of governing management of the foreign company in Russia.

In case when a foreign company can prove that the above mentioned criteria are fulfilled in respect to any other state, Russia is deemed as place of management of the foreign company if at least one of the following activities is held in Russia – bookkeeping or managerial accounting of the company (except for some types of accounting activity), record keeping of the company or staff operational management.

There is also a list of activities that are not regarded as a part of management for tax residence purposes: preparation and decision making on questions that fall under competence of the general meeting of shareholders, preparation for the meeting of the board of directors, execution of planning and control activities are tax neutral for the establishment of tax residence.

The above-described rules for defining the place of management were retroactively enacted in June 2015 instead of the original rules that were criticized for being contradictory and illogical in respect to relations between basic and additional conditions as well as for the mixture of elements of strategic and day-to-day management [Bruk 2015: 70]. The updated hierarchy of criteria has become more logical, but the mixture of elements of strategic and day-to-day management remains.

The management test for corporate tax residence was introduced as part of the deoffshorization package, that is why active companies doing real business outside Russia are generally exempt from Russian tax residence – a foreign company that conducts business activity with its own qualified personnel and assets in another state that has a tax treaty with Russia is regarded as not having a place of management in Russia.

Five years have already passed since the enactment of the new criterion for corporate tax residence, however there is still no case law on application of this concept. Evidently in the dichotomy between CFC rules and management test for corporate tax residence Russian tax authorities have made choice in favor of the first mechanism. Possibly, due to the upcoming reform of CFC rules more attention will be paid to corporate tax residence, although application of these rules implies substantial administrative costs and rises issue of tax cooperation in recovery of taxes where Russian authorities don't have a lot of experience.

5. Beneficial owner concept

The concept of the beneficial owner has been used by the USSR in its double tax treaties since the 1980s, and nowadays most of Russia's double tax treaties have a beneficial owner clause in articles on interest, dividends and royalties. However, for a long time this concept was not applied or was applied quite formally, with no in-depth investigation behind the formal statements in the documents of taxpayer and tax agent. Partially it was due to different wording of the concept in the treaties and lack of definition of a beneficial owner in double tax treaties and national legislation.

In the 2000s – beginning of the 2010s tax authorities started to pay attention to the beneficial owner concept and tried to define the characteristics of the beneficial owner, and first cases on application of the concept appeared. But the real boom in application of the concept started in 2015, partially due to the explanations of the Ministry of Finance issued in 2014, and nearly at the same time when the concept of “a person with a factual right on income” was introduced in the Russian Tax Code by the deoffshorization law of 2014. Since 1 January 2015 Russian Tax

Code sets rules on beneficial owner, although these words are not used in the Code – related articles (Articles 7 and 312 for corporate income taxation) use the term “person that has a factual right on income” instead of “beneficial owner”. We will further discuss beneficial owner bearing in mind the difference of the terms used in Russian legislation.

According to the introduced definition [Tax Code, Art. 7], persons (as well as unincorporated structures) are considered the beneficial owner of income if they have the right to use and (or) dispose of this income, or for the benefit of which another person (foreign structures without formation of a legal entity) are entitled to use the income received. The right to use and (or) dispose of income may be based on the direct or indirect participation in the company, control over the company or any other circumstances. Functions performed and risks undertaken must be taken into consideration when determining beneficial owner of income. A person with limited powers regarding disposal of the income received, performing only intermediary functions in favor of another person (unincorporated structures), not performing other functions and not taking any risks other than paying all income or part of it to another person, cannot be regarded as the beneficial owner of income.

In order to benefit from the double tax treaties provisions a recipient of income from Russian sources should be able to provide the Russian tax agent with written confirmation of the fact that it is the beneficial owner of income prior to the payment date.

In addition, a “look-through” approach in determining the beneficial owner of income was introduced into the Russian tax legislation. According to this approach, if, at the moment of payment of income (in particular, dividends, interest, royalties) the tax agent knows that the beneficial owner of income is not the direct recipient of income, the tax agent may apply the double tax treaty and the respective rates signed between Russia and the country of residence of the beneficial owner.

Russian tax authorities started to widely apply the beneficial owner concept in 2015, and are quite successful in it – tax authorities win the vast majority of disputes that involve application of the beneficial owner concept and assessment of additional tax at the source.

The Federal Tax Service has issued several letters [Federal Tax Service CA-4-7/9270@, CA-4-9/8285, CA-4-7/8448@] with analysis of the most important judicial decisions and there are several major points that are worth noticing.

Firstly, the Federal Tax Service qualifies the beneficial owner concept as a general anti-avoidance rule that is applicable to all types of income, not only to passive income such as interests, dividends and royalties.

Secondly, the Federal Tax Service sets criteria that could confirm that a foreign company is the beneficial owner of Russia-sourced income: independence of directors in decision-making, power to dispose of the income, genuine business activities, availability of personnel, office and related general administrative expenses, use of income in entrepreneurial activities and absence of any legal or actual obligations to further transfer of the income. This information may be received from foreign tax authorities, financial statements of the company, commercial databases, publicly accessible foreign company registries and public sources.

Finally, according to the Federal Tax Service tax authorities are obliged only to define whether the recipient of the Russia-sourced income is its beneficial owner – there is no requirement for tax authorities to investigate who is the beneficial owner of such income if its recipient cannot be treated as such. If the tax authorities establish that the recipient of the income is not the beneficial owner, then general withholding corporate income tax shall be applied. If the Russian company provides information about the beneficial owner, the tax authorities should consider this information in making final assessment of corporate income tax.

The beneficial owner concept is very controversial and has been subject to a lively scholarly discussion for many years, courts and administrations in different countries apply a wide variety of approaches to beneficial ownership [Meindl-Ringler 2016: 2]. Detailed comment on Federal Tax Service's guidelines on beneficial owner concept is beyond the scope of the article, but we would like to stress that we cannot approve the desire of Russian tax authorities to widen the scope of the rule that was originally designed as a quite narrow rule and apply beneficial owner concept as a general anti-avoidance rule in case of treaty abuse. Still interpretation of beneficial ownership is very controversially discussed in academic literature. Well-known authors take very different positions when it comes to the meaning of beneficial ownership - most authors, however, favour an international tax meaning of the term [Meindl-Ringler 2016: 77–94]. This position is also supported by Russian experts – e.g. according to A. Demin and A. Nikolaev, a universal approach included in the text of the OECD Model Convention or its Commentary should prevail over any meaning of the term that is contained in domestic legal systems [Demin, Nikolaev 2019: 12].

6. Automatic exchange of information

For a long time exchange of information in Russia was based mainly on application of double tax treaties. All Russian double tax treaties contain articles about the exchange of information, but their wording is very different as treaties follow different models, including different versions of the OECD model and the UN model.

The vast majority of Russia's tax treaties don't set rules on automatic exchange of information. An example of exception from this rule is the double tax treaty between Russia and India that provides for the possibility to exchange information "on regular basis".

Russia signed Convention on Mutual Administrative Assistance in Tax Matters (developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010) on 11 November 2011. The Convention was ratified only almost 3 years later – on 4 November 2014, entered into force on 1 July 2015 with effective date of 1 January 2016. Nowadays Russia is one of 136 jurisdictions participating in the Convention on Mutual Administrative Assistance in Tax Matters.

Membership in this multilateral treaty gives numerous benefits for international tax cooperation and tax transparency. In particular, Article 6 provides for the possibility of automatic exchange of information, and Russia signed both multilateral competent authority agreements - on automatic exchange of financial account information in May 2016 and on exchange of country-by-country reports in January 2017. In the very end of 2017 after the enactment of the required acts Russia activated bilateral relationships for both types of automatic exchange of information. According to the information on the OECD web-site as of February 2020, Russia receives information on financial accounts from 95 jurisdictions and sends it to 68 jurisdiction. The network for automatic exchange of country-by-country reports is a bit narrower – as of January 2020 Russia receives information from 70 jurisdiction and sends it to 57 jurisdictions.

Automatic exchange of information is very important for tax administration as it gives additional opportunities to detect illegal behaviour. Exchange of financial accounts information allows to identify unreported foreign bank accounts, foreign-sourced income, controlling persons and their controlled foreign companies. Exchange of country-by-country reports is an important part of transfer pricing control. At the same time automatic exchange of information raises a number of questions, e.g. related to confidentiality and data protection.

One of the issues that deserves attention in the course of critical analysis of existing rules on automatic exchange of information is the lack of regulation on protection of taxpayers' rights. Protection of taxpayers' rights in respect of exchange of information is widely discussed in English-language literature on international taxation, although Russian literature doesn't usually cover this issue. In regard to protection of taxpayers' rights it is definitely worth noticing the works of Ph. Baker and P. Pistone [Baker, Pistone 2015; Baker, Pistone 2016].

We could totally agree with Ph. Baker and P. Pistone that cross-border tax procedures, including exchange of information, should evolve in a way that allows a direct involvement of taxpayers with a view to allowing them to have effective international legal remedies available for ex ante protection of their rights – to allow taxpayer to have access to all relevant information held by the tax authorities and to be promptly informed of any action connected with tax collection concerning them. In respect to the automatic exchange of information this mechanism of ex ante protection of taxpayers' rights could, for example, involve a set of periodical deadlines for taxpayers to present their arguments before information is shared with other countries [Baker, Pistone 2016: 343-345]. There is also a necessity to ensure protection of taxpayers' rights by virtue of protecting their data in automatic exchange of information procedures [Huang 2018].

With regard to automatic exchange of information, another interesting issue concerns the nature of this mechanism. On the one hand, automatic exchange of information is based on multilateral instruments. On the other hand, one of the important prerequisites for the participation in automatic exchange of information is that at the time of signature of a multilateral competent authority agreement a competent authority must decide on the list of jurisdictions to which it intends to have the agreement in effect [MCAA CRS, s. 7; MCAA CbCR, s. 8]. Also agreements provide for the possibility for jurisdictions, specially listed in the list of non-reciprocal jurisdictions, to receive information without sending it [MCAA CRS, s. 2, MCAA CbCR, s. 2]. Thus being based on the multilateral treaty and multilateral competent authority agreements automatic exchange of information in fact appears to be much more bilateral or even unilateral. And as we can see from the information on the OECD web-site Russia acts more like a recipient of the information.

7. Russia's double tax treaty network

Currently Russia's tax treaty network includes 84 double tax treaties, with some of the treaties and amending protocols having been signed in the previous 6 years – for example, treaties with China (2014), Belgium (2015), Ecuador (2016), Hong Kong (2016), Japan (2017), and protocols to treaties with China (2015), Singapore (2015), Belgium (2018) and Sweden (2018). However, the most immense change to the double tax treaty network is expected to be made by the Multilateral Convention to Implement Treaty Related Measures to Prevent BEPS (MLI).

Russia became one of the 70 signatories to the MLI in June 2017, ratified it in May 2019 and entered it into force from 1 October 2019, with 1 January 2020 as expected effective date. However, on 24 December 2019 the Ministry of Finance published on its official website

an information notice explaining that the MLI will be applied for tax treaties concluded by Russia not earlier than 1 January 2021: according to Russia's reservations the MLI is to be applied for tax treaties concluded by Russia only after Russia and its tax treaty partners have exchanged notices stating that they finished all internal procedures necessary for the MLI to come into force with respect to every covered tax treaty. On 30 April 2020, Russia deposited a notification confirming the completion of its internal procedures for the entry into effect of the MLI provisions with respect to 27 of its covered tax agreements² – in respect of these treaties the MLI will be in effect from 1 January 2021. Approximately half of the covered tax agreements still wait for the completion of internal procedures.

Russia listed 66 agreements as covered by the MLI – and it means that almost one fourth of the existing double tax treaties remain unattached by the MLI³. Russian authorities didn't give any explanation on this choice of covered tax agreements, but partially it may be connected with the intention to renegotiate the existing treaties. For example, a brand new treaty was signed with Japan in 2017 and it reflects MLI's recommendations. Although it would be fair to say that this treaty looks more like an exemption – at least there is no available information on negotiations in regard of other treaties.

Russia has opted to cover by the MLI only 66 of its double tax treaties, however even less than 66 treaties are expected to be influenced by the MLI – by now 15 states from contracting parties in these 66 treaties haven't signed the MLI⁴.

Alongside with rules that form the minimum standard of the MLI (new preamble, principle purpose test, mutual agreement procedure) Russia has opted for the simplified limitation on benefits provision, corporate tie-breaker rule based on mutual agreement, rules on taxation of dividend transfer, indirect sale of immovable property and artificial avoidance of permanent establishments. Russia didn't choose to apply rules on arbitration and reserved the right not to apply rule on methods of elimination of double taxation.

Assessing the forthcoming changes in Russian double tax treaties, we should remember that in order to understand whether the changes are to be made in respect of cross-border

² Australia, Austria, Belgium (old treaty), Canada, Denmark, Finland, France, Iceland, India, Ireland, Israel, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Qatar, Serbia, Singapore, Slovak Republik, Slovenia, Ukraine, United Arab Emirates, United Kingdom.

³ Russia will not extend Multilateral Convention coverage, *inter alia*, to Tax Agreements with Albania, Algeria, Belarus, Botswana, Venezuela, Iran, Kirgizia, the Democratic People's Republic of Korea, Macedonia, Mali, Namibia, Syria, Tajikistan, Turkmenistan and Uzbekistan.

⁴ The following states – parties of the covered tax agreements, are not signatories to the MLI at the moment: Azerbaijan, Brazil, Botswana, Cuba, Ecuador, Lebanon, Moldova, Mongolia, Montenegro, Philipinnes, Sri Lanka, Thailand, USA, Venezuela, Vietnam.

taxation between certain states, taxpayers have to consider positions of both jurisdictions. For example, Russia has opted for the simplified limitation of benefits provision, but only twelve of its partner states⁵ have opted to choose it. This leads to the situation when only one sixth of the covered tax agreements is expected be modified with simplified limitation of benefits provision. This is a very good example to challenge the multilateral nature of the regulation that we will have after the MLI comes into effect.

The international tax reform is an ongoing process, and one of the latest news is that in the Presidential Address to the nation on March 25, 2020 President of Russia Vladimir Putin announced the intention to renegotiate double tax treaties in order to allocate to the source state the right to tax dividends and interest at a minimum rate of 15%. Russia is ready to withdraw from the treaties if the other contracting states don't agree on the proposed changes.

Russia's initiative on 15% taxation of dividends and interest in the source state seems to be quite an original idea – model acts, both of international organizations (OECD, UN) and of Russian government, have different recommendations on taxation of dividends and interest. If Russia wants to have such rules in all of its double tax treaties, it will have to renegotiate almost all of its double tax treaties.

In March and April 2020 Russia sent proposals to sign the related amending protocols to Cyprus, Malta and Luxembourg. The states are expected to give their answers in summer 2020. The perspectives of these negotiations are unclear, but we can expect that possibly the balance between bilateral and unilateral regulation of international taxation will be shifted if these negotiations lead to Russia's withdrawal from treaties.

6. Conclusion

Since 2014 the cross-border taxation landscape has changed dramatically in Russia. Numerous substantial and procedural rules were introduced both in tax legislation and tax treaties concerning brand new mechanisms and modification of already existing rules.

At the beginning of the realization of the deoffshorization policy Russia introduced two main mechanisms for taxation of funds that are held in low tax jurisdictions – CFC rules and management test for corporate tax residence. The last five years have shown that Russian tax authorities have made choice in favor of the first mechanism – at least we

⁵ Argentina, Armenia, Bulgaria, Chile, Denmark, Greece, Iceland, India, Kazakhstan, Mexico, Norway, Slovakia.

can't see any case law on application of tax residence rules. Possibly the balance will shift after the enactment of the announced changes in the CFC regime, although application of management based corporate tax residence rules implies substantial administrative costs and raises the issue of tax cooperation in recovery of taxes where Russian authorities don't have a lot of experience.

In order to fight with transfer of passive and highly mobile income to low-tax jurisdiction Russian authorities have opted for the concept of beneficial owner that has been in double tax treaties for several decades already. However, the boost of case law has started since 2015 and coincided with the introduction of a beneficial owner concept and look-through approach in the Russian legislation. Tax authorities are quite successful in applying the beneficial owner concept in the courts, however some points in Russian tax authorities' position on interpretation of beneficial owner concept deserve criticism – e.g. the desire to widen the scope of the rule that was originally designed as a quite narrow rule and apply beneficial owner concept as a general anti-avoidance rule in case of treaty abuse.

International tax reform would be incomplete without introduction of procedural rules that strengthen the enforcement of new substantive rules. Russia has finally ratified the Convention on Mutual Administrative Assistance in Tax Matters and has joined available types of automatic exchange of information – both on financial accounts information and country-by-country reports. However, as the data show, in automatic exchange of information Russia acts more like a recipient of the information, and it allows to doubt the multilateral character of this form of international cooperation. Alongside with the success of this form of administrative cooperation issues that require attention remain, e.g. protection of taxpayers' rights in the context of these cross-border procedures.

Finally, changes to Russian double tax treaty network must be highlighted. Over the last six years the number of double tax treaties hasn't changed dramatically, and the most immense changes to the rules of double tax treaties were expected in regard to participation in the MLI. However, the regulation seems to become not as multilateral as it was expected to be: at the moment only 51 out of 84 treaties are really covered by the MLI and positions on notifications and reservations of countries differ greatly. Apart from the MLI, Russia's recent initiative on changing the allocation rules on dividends and interest in its double tax treaties is worth mentioning as it is not in line with OECD/UN recommendations and can possibly challenge the balance between bilateral and unilateral elements in international taxation landscape in Russia.

References

- Arnold B.J. The Evolution of Controlled Foreign Corporation Rules and Beyond, *Bulletin for International Taxation*, Vol. 73, No 12, 2019.
- Baker Ph., Pistone P. The Practical Protection of Taxpayers' Fundamental Rights: General Report, *Cahiers de Droit Fiscal International*, Vol. 100b, 2015.
- Baker Ph., Pistone, P. BEPS Action 16: The Taxpayers' Right to an Effective Legal Remedy Under European Law in Cross-border Situations, *EC Tax Review*, Vol. 25, Issue 5/6, 2016.
- Bruk, B.: Nalogovoe rezidentstvo inostrannyh organizacij v Rossii: kriticheskij analiz novell rossijskogo zakonodatel'stva [Critical Analysis of the New Provisions of Russian Tax Law Concerning Russian Tax Residence of foreign organizations], *Zakon*, No 2, 2015
- Demin, A., Nikolaev, A.: The Beneficial Owner Concept in the Context of BEPS: problems and prospects, *Financial Law Review*, No 1 (13), 2019.
- Ivanova, N. et al.: Transfer Pricing Rules in Russia and Germany: similarities and differences, *Intertax*, Vol. 45, Issue 2, 2017.
- Huang, X.: Ensuring Taxpayer Rights in the Era of the Automatic Exchange of Information: EU Data Protection Rules and Cases, *Intertax*, Vol. 46, Issue 3, 2018.
- Kilinkarova, E. et al.: Russia, in: Traversa, E., *Corporate Tax Residence and Mobility*, Amsterdam: IBFD, 2018.
- Meindl-Ringler, A.: *Beneficial Ownership in International Tax Law*, Netherlands: Kluwer Law International B.V., 2016.
- Mikhaylova, M., Akhonina Yu.: Thin Capitalization in Russia: Rules, Trends and Changes, *Intertax*, Vol. 44, Issue 11, 2016.
- OECD, *Addressing Base Erosion and Profit Shifting*, Paris: OECD Publishing, 2013.
- OECD, *Action Plan on Base Erosion and Profit Shifting*, Paris: OECD Publishing, 2013.
- Presidential Address to the Federal Assembly of December 12, 2013, <http://en.kremlin.ru/events/president/transcripts/messages/19825>
- Presidential Address to the Nation of June 23, 2020, <http://en.kremlin.ru/events/president/transcripts/statements/63548>
- Presidential Address to the Nation of March 25, 2020, <http://en.kremlin.ru/events/president/news/63061>
- Results of the application of controlled foreign company rules in 2017, https://www.nalog.ru/rn77/news/activities_fts/7144772/
- Starzheneckaja, L. *Pravovoe regulirovanie nalogooblozhenija kontroliruemyh inostrannyh kompanij: opyt zarubezhnyh stran i Rossii* [Legal Regulation of Taxation of Controlled Foreign Companies: Experience from Foreign Countries and Russia], Russia: Statut, 2018.

Legal acts

- Federal Law of 24 November, 2014 No 376-FZ On amending Parts I and II of the Tax Code of the Russian Federation (in respect of taxation of the profits of controlled foreign companies)"
- Tax Code of the Russian Federation, part 1, of 27 July, 1998 (as amended)

Tax Code of the Russian Federation, part 2, of 5 August, 2000 (as amended)

Convention on Mutual Administrative Assistance in Tax Matters, of 25 January, 1988 (as amended)

Multilateral Convention to Implement Treaty Related Measures to Prevent Base Erosion and Profit Shifting, of 7 June, 2017 with Russia's reservations and notifications

Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information, of October, 2014

Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports, of 27 January, 2016

Letter of Federal Tax Service CA-4-7/9270@ of 17 May, 2017

Letter of Federal Tax Service CA-4-9/8285 of 28 April, 2018

Letter of Federal Tax Service CA-4-7/8448@ of 6 May, 2019