

The Implementation of the Russian Federation of International Tax Agreements: Analysis of Concerns and Suggestions

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ABSTRACT: One of the key tasks of the international tax agenda at the present stage is to achieve a fair and certain taxation of economic activity in profit-making states. States around the world are affected by tax minimization strategies by distributing taxable income to low or zero tax burdens and lowering the tax base in the state of origin of capital. The current international tax regulatory framework developed within the framework of international organizations contains approaches and tools to combat international tax evasion. This study is devoted to the study of the implementation by the Russian Federation of international tax agreements and proposals on multilateral cooperation in the tax sphere at the interstate level. The paper analyzes the soft law instruments for tax regulation in the framework of international organizations, which at the same time give a significant result of the implementation processes at the national level. Trends in the development of international legal regulation of interstate cooperation on tax issues are identified. The latest practice of international cooperation of the Russian Federation on the implementation of the components of the BEPS plan (Action Plan on Base Erosion and Profit Shifting. Organization for Economic Cooperation and Development) is analyzed. The main consequences of the implementation of the multilateral convention by the Russian Federation on the implementation of measures related to tax agreements in order to prevent the erosion of the tax base and the removal of profits from taxation for Russian companies are identified.

Keywords: OECD, BEPS, Tax Treaty, Special Tax Regimes, Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

I. INTRODUCTION

In the modern world, which is characterized by the growing interdependence of states and the interdependence of national economies and development strategies, the coherence of national tax policies and the actions of tax authorities is gaining importance [1]. Various tax optimization methods, including aggressive tax planning strategies that use gaps and inconsistencies in national tax regulations, allow you to artificially transfer profits to low-tax or tax-free jurisdictions. As a result of a problem that has truly become world-wide, the annual loss of global corporate income tax is estimated at 4 to 10% of all income, 100-240 billion US dollars per year^[a].

The transition of the Russian Federation to a market economy, the abolition of the state monopoly on foreign economic activity necessitated interstate cooperation on tax issues, both in multilateral formats and on a bilateral basis. In the period of the nineties of the last century, cooperation of the Russian Federation in the tax sphere developed mainly on a bilateral basis. The international legal basis for cooperation was bilateral double taxation agreements based on the *OECD Model Tax Convention*^[b] and the *UN Model Tax Convention*^[c], as well as bilateral agreements on administrative and legal cooperation between states). Bilateral double tax treaties have become an important instrument of international tax cooperation. Russia has entered into similar agreements with more than 80 jurisdictions.

This format of interaction was due to the level of technical development of tax control mechanisms and

accounting for income from foreign economic activity, data exchange in the tax sphere at the interstate level.

Due to these factors, tax control at the interstate level was carried out selectively and had a peculiar demonstration character.

Digital transformations and technologies in the implementation of economic activity required a change in the paradigm of existing models of tax control and, accordingly, interstate interaction of the Russian Federation in the field of development of digital tax control in the framework of the current tax system.

II. METHODS

The methodological basis of the study in the framework of this article was composed of such methods of scientific knowledge as the method of complex analysis, the formal legal method. When analyzing the theoretical and regulatory framework, special literature, the method of comparative law, as well as the method of interpretation of law, are used. In solving the tasks at the junction of the branch of legal sciences, an interdisciplinary approach was used.

III. RESULTS AND DISCUSSION

In the period following the global crisis of 2008-2009, thanks to the activities of two large intergovernmental institutions of tax regulation, such as the OECD and the Group of 20 (G20 is a format created specifically to coordinate the intergovernmental efforts of leading states to bring the world economy out of the crisis), they were developed new technical tools for interstate tax information exchange [2]. In 2010, as part of the development of multilateral cooperation in tax control,

the OECD Convention on Mutual Administrative Assistance in Tax Matters was signed, aimed at preventing international tax evasion and tax fraud^[d]. This filled the gaps in international tax regulation, which previously allowed dishonest taxpayers to hide from prosecution of national tax and judicial authorities in the territory of tax havens.

It is noteworthy that the parties to this Convention are not only OECD member states, but also all interested states participating in the activities of various OECD tax authorities, such as the OECD Tax Committee, the Forum on Tax Administration and the Global Forum on Transparency and Information Exchange for the Purpose of Taxation, as observer countries, including the Russian Federation^[e].

The turning point in the history of multilateral cooperation in the tax sphere at the interstate level was the launch of an Action Plan to combat the erosion of the tax base and the removal of profits from taxation - the BEPS Plan. It is important to note that, under the chairmanship of the Russian Federation, the leaders of the G20 countries with the active participation of the OECD approved the Plan in 2013. BEPS has become a roadmap for activities in 15 areas aimed at improving international tax policy and tax administration of tax planning schemes used by multinational companies to artificially deduct taxable profits from taxation in those countries where this profit was received [3].

In 2014, the OECD published the Common Reporting Standard (CRS) for the automatic exchange of financial account information^[f]. CRS establishes a list of financial information to be exchanged; defines reporting financial institutions; It gives a systematization of financial accounts and persons in respect of whom the exchange is carried out, and also establishes general procedures for checking financial institutions of their clients (due diligence).

Since then, over a hundred jurisdictions have pledged to introduce such a standard and begin the exchange of information in order to tax the foreign income of their residents. The CRS obliges national tax administrations around the world to automatically exchange information about taxpayers - subjects of foreign economic activity, receiving the necessary information from credit and other financial institutions.

Information exchange is implemented through the following four key elements:

- Model agreement with the competent authority (Model Competent Authority Agreement, MCAA), which defines and ensures the international legal regime for the automatic exchange of CRS information^[g];

- The General Reporting Standard (CRS);

- OECD Comments on the MCAA and CRS^[h];

- CRS XML Schema User Guides (Common Reporting Standard User Guide and Schema)^[i].

The mechanism of such an exchange is based on the analysis of large databases of information transmitted by taxpayers and financial institutions and the operation of digital platforms-virtual communication channels. Cooperation under the CRS is based on the previously mentioned double taxation treaties, as well as the 1988 OECD Convention on Mutual Administrative Assistance in Tax Matters (Article 6)^[j].

The legal basis for the exchange in the Russian Federation was Federal Law of November 4, 2014 No. 325-FL "On Ratification of the Convention on Mutual Administrative Assistance in Tax Matters". The ratification of the Convention by the Russian Federation has become an important and necessary step towards

multilateral tax cooperation on the implementation of the BEPS plan.

The provisions of the Convention allowed Russia, along with tax administrations of more than 120 jurisdictions, to interact in terms of the possibility of exchanging tax information, conducting joint tax audits, and collecting tax debts outside of national jurisdiction^[k].

The Russian Federation, as part of the implementation of the BEPS plan, has also changed to strengthen control since 2015^[l], the taxation rules for profits of controlled foreign companies (CFCs) [3] Transfer pricing rules apply [4].

It should be noted that in the Russian Federation, digitalization is an unconditional priority of the state tax policy, which is being implemented, including in the framework of the Strategy for the Development of the Information Society in the Russian Federation for 2017-2030 years, the program "Digital Economy", the national project "Digital Economy". [5] A list of bills on the digital economy has been defined, work on which is already underway in the State Duma and the Federation Council, the Ministry of Digital Development has been formed, unified state information systems have been introduced in the tax, financial, supervisory and other fields^[m].

The most important and milestone in the implementation of the BEPS^[n] plan was the development and adoption within the OECD of a multilateral Convention on the implementation of measures related to tax agreements, in order to prevent the erosion of the tax base and the withdrawal of profits from taxation, representing a global agreement between states aimed at harmonizing the provisions existing agreements on avoidance of double taxation (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting^[o], in the international practice of Multilateral Instrument, hereinafter - the Convention MLI) [6].

Significance of adoption OECD Secretary General Angel Gurría (OECD Secretary-General) emphasized as follows: "The conclusion of this multilateral document marks a new turning point in the history of tax treaties. We are moving towards the rapid implementation of the far-reaching reforms agreed upon under the BEPS project in more than 1,200 tax treaties worldwide.

In addition to saving signatories from the burden of revising these treaties bilaterally, the Convention will lead to greater certainty and predictability for business, as well as better functioning of the international tax system in the interests of our citizens^[p]".

The provisions of the MLI Convention are an innovation in tax regulation at the international level: ratification by the states of the Convention eliminates the need for individual review/reconciliation of previously concluded double taxation treaties bilaterally. Thus, the Convention provides for the possibility of applying its provisions to 71 existing interstate double taxation avoidance agreement concluded by the Russian Federation.

The content of the MLI Convention includes a package of mandatory, the so-called "minimum standard" and optional provisions for application. The ratification by the Russian Federation of the MLI Convention^[q] provides for the renovation of concluded agreements on the avoidance of double taxation in terms of the "minimum standard" and certain optional provisions (if they are mutually implemented by the respective states).

Analysis of the MLI Convention allows us to highlight the following main novelties for Russian economic entities:

- Introduction of the "Principal Purpose Test" (PPT, Clause 6 of the BEPS Plan) rule: the tax relief provided by the double tax treaty will not be granted if they are an end in itself or one of the main objectives of the transaction;
- Introduction of the Simplified Limitation on Benefits Provision: provides for tax benefits under tax agreements only if the persons applying for preferences are "qualified persons" (the criteria for determining qualified persons are contained in the MLI Convention). In particular, if the founders of the company are more than 50% residents of another state;
- Dividend payments to foreign companies will not be taxed only if the applicant for them has the right to the corresponding capital for at least a year.

IV. SUMMARY

The globalization of economic processes, the interest of states in stimulating national economic growth and the global economy as a whole, objectively determine the need for interstate cooperation in the tax sphere in the broadest sense, including the processes of tax administration and control. This interaction, as shown by the practice of signing international tax treaties by states and their subsequent implementation at the national level, is less susceptible to geopolitical, country risks, and national economic protectionism. The multilateral format of interaction between states in the tax sphere is potentially important and necessary for both national tax administrations and taxpayers-subjects of economic activity. Thus, the Russian Federation, not being a member state of the OECD, is consistently implementing the state policy of international tax administration standards, being a party to relevant international legal agreements (mainly developed within the framework of this international organization) and implementing their provisions in national tax legislation, international projects and initiatives in the framework of participation in the activities of international organizations.

To date, in the framework of international cooperation of states in the tax sphere, a mechanism is being formed that includes regulatory and institutional levels. Among the active institutional actors: The Organization for Economic Cooperation and Development (OECD), G20, The Intra-European Organization of Tax Administrations IOTA, The Inter-American Center for Tax Administration (The Inter-American Center of Tax Administrations CIAT), European Union (European Union, EU).

The regulation of tax relations is currently carried out mainly on the basis of soft law instruments, such as codes of conduct, guidelines, roadmaps, and expert assessments. [7, 10] The implementation of these instruments at the national level and the unification of the national tax regulation, [8, 9] in this regard, are one of the key factors in the implementation of the BEPS plan.

Since 2020, the application of the provisions of most bilateral international double tax treaties concluded by the Russian Federation will require correlation with the provisions of the Convention on the implementation of measures related to tax agreements in order to prevent the erosion of the tax base and the removal of profits from taxation. As a result, the situation of applying tax benefits will be subject to a significant restriction. In particular, the risks of tax agents paying passive income abroad (interest, dividends, royalties) will increase. Taxpayers will need to demonstrate and prove to the tax authorities that the main purpose of structuring is not

exclusively to apply the favorable provisions of double taxation treaties (included in the "minimum standard"); or make it impossible to apply agreements to intermediate holding/financial companies due to increased requirements for the level of presence and activities, as well as restrictions in terms of the ownership structure of such companies (optional provision).

In practice, Russian tax agents when paying income in favor of foreign companies when applying the agreements will face the need to take into account a whole range of restrictive measures, which, in addition to the existing concept of the beneficial owner of income and the doctrine of unjustified tax benefit, new rules to combat abuse in the application of avoidance agreements double taxation.

V. CONCLUSIONS

The international legal regulation of tax relations in the last decade has been developing in the framework of two trends: increasing resistance to abuse in terms of tax planning and complicating the mechanism of tax control, both at the interstate and national levels, including the development of technologies that ensure maximum information openness and accessibility of databases. The national implementation by the states of the Convention on the implementation of measures related to tax agreements in order to counter the erosion of the tax base and the removal of profits from taxation, globalizes these trends.

The noted trends are aimed at fair, transparent, but also, obviously, more complex tax administration. As a result, the economic attractiveness of a number of business tax optimization tools is leveled, in particular, offshore, midshore, onshore^[7].

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REFERENCES

- [1]. Bütthe T., & Mattli W. (2011). *The New Global Rulers: The Privatization of Regulation in the World Economy*. Princeton: Princeton University Press, 320 p.
- [2]. Pogorletsky, A. (2005). *Principles of international taxation and international tax planning*. SPb.: Publishing House of St. Petersburg. State Univ., p. 358-366.
- [3]. Machekhin, V. (2014). Tax deoffshorization in Russia and the BEPS project: an attempt to compare. *Bulletin of the University named after O.E. Kutafina*. P. 107. 2016; Eremina, A. S. Rules on foreign controlled companies and prospects for their application in Russia. *Legislation*. No. 5.
- [4]. Mazoruk, E. S. (2015). Three-level documentation on transfer pricing and prospects for its introduction in Russia. *Tax Policy and Practice*. No. 10.
- [5]. Pogorletsky, A., & Keschner, M. (2019). *International aspects of digital tax control: a monograph for undergraduates studying under the programs in the fields of Economics, State Audit and Finance and Credit / [I.A. Mayburov et al.]; under the editorship of I.A. Mayburova, Yu.B. Ivanova. - M., Unity-Dana, 263 p.*
- [6]. Collier, R., & Andrus, J. (2017). *Transfer Pricing and the Arm's Length Principle After BEPS*. Oxford University Press, 336 P.
- [7]. Christians A. (2008). *Hard Law & Soft Law in International Taxation*. *Legal Studies Research Paper Series*. Paper No. 1049, May 2007, p. 7.

- [8]. D'Aspremont J. (2008). Softness in International Law: A Self-Serving Quest for New Legal Materials. *European Journal of International Law*, 2008, no. 5, p. 1076.
- [9]. Demin A.V. (2018) Soft Law Concept in Globalized World: Issues and Prospects. *Pravo. Zhurnal Vysshey shkoly ekonomiki*, no. 4, pp. 49–73 (in English) doi: 10.17323/2072-8166.2018.4.49.73
- [10]. Kopits, G. (1992). Tax Harmonization in the European Community: Policy Issues and Analysis. Washington, D.C.: *International Monetary Fund*. pp. 22–23.
- [11]. Mwaniki, P., & Ondiek, C.O. (2018). Evaluation of the Effects of SaaS on SMEs in Nairobi County, Kenya. *Journal of Information Systems Engineering & Management*, 3(3), 20.
- [12]. Shokri, F. (2016). Investigating Precipitation Extreme and Ardebil Temperature Behavior by Statistical Tests. *UCT Journal of Research in Science, Engineering and Technology*, 4(1), pp. 26-30.

Footnote

- [a] Multilateral-instrument-BEPS-tax-treaty-information-brochure. <https://www.oecd.org/tax/treaties/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf>
- [b] OECD Model Tax Convention. URL: <https://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>.
- [c] The UN Model Convention. URL: https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf
- [d] The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol (2011). Organisation for Economic Cooperation and Development (OECD) and Council of Europe. URL: http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#.WON0zGnyjIU#page4and
- [e] On March 12, 2014, at a closed meeting, the OECD Council decided to temporarily suspend the negotiation process with Russia in connection with events in Ukraine. Since 2014, Russian representatives have not been invited to participate in the OECD annual ministerial meetings. Despite the suspension of the consideration of the Russian application, Russia retains the official status of the acceding country and continues to participate in OECD working bodies at the expert level (it has the status of an “associate member” in the OECD Working Group on Combating Bribery of Foreign Officials, the Steel Committee, and the Global Transparency Forum and the exchange of information for tax purposes, the initiative “Combating the erosion of the tax base and the transfer of profits”, as well as the status of “member” in more than 20 committees of the Organization). URL: <http://www.mid.ru/rossia-v-gruppe-20-rossia-i-spezializirovannye-mezdunarodnye-ekonomiceskie-organizacii-mvf-vto-oesr-fse>

- [f] CRS by jurisdiction. Organisation for Economic Cooperation and Development (OECD) 2018. URL: <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/>
- [g] Model Competent Authority Agreement, MCAA. URL: <https://www.oecd-ilibrary.org/docserver/9789264267992-en.pdf?expires=1548142953&id=id&accname=guest&checksum=F949548B49A03A9B770740286D6D208F>
- [h] Commentaries on the Common Reporting Standard (CRS). URL: <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/common-reporting-standard-and-related-commentaries/#d.en.345314>
- [i] Common Reporting Standard User Guide and Schema (CRS XML Schema). URL: <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/schema-and-user-guide/#d.en.345315>
- [j] Convention on Mutual Administrative Assistance in Tax Matters. URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007a859>
- [k] Federal Law of November 4, 2014 No. 325-ФЗ “On Ratification of the Convention on Mutual Administrative Assistance in Tax Matters”. URL: <https://rg.ru/2014/11/07/konvenzia-dok.html>
- [l] Federal Law of November 24, 2014 No. 376-ФЗ “On Amendments to Parts One and Two of the Tax Code of the Russian Federation (regarding taxation of profits of controlled foreign companies and income of foreign organizations)” URL: <http://kremlin.ru/acts/bank/39080>
- [m] The project “The main directions of the budget, tax and customs tariff policy for 2018 and the planning period of 2019 and 2020”. URL: http://komitet-bn.km.duma.gov.ru/Novosti_Komiteta/item/2973563.
- [n] Point 15 of the BEPS Plan
- [o] *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*. <https://www.oecd.org/tax/treaties/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf>
- [p] <https://www.oecd.org/tax/treaties/multilateral-instrument-BEPS-tax-treaty-information-brochure.pdf>
- [q] Federal Law dated 01.05.2019 No. 79-ФЗ “On Ratification of the Multilateral Convention on the Implementation of Measures Related to Tax Agreements in order to Counteract the erosion of the tax base and the withdrawal of profits from taxation”. <http://publication.pravo.gov.ru/Document/View/0001201905010022>
- [r] The majority of experts in the field under study ascertain the “sunset” of the tax haven era, the growth in the number of calls to which occurred in the late 90s, the first decade of the current century: “the golden age - “we do not pay taxes anywhere” - is over.”, said the OECD Secretary General Angel Gurría presenting a BEPS plan. See <https://www.vedomosti.ru/business/articles/2019/01/20/791897-ofshori-uzhestochili-trebovaniya>