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ON THE DEVELOPMENT OF RUSSIAN TAX TREATY CASE LAW

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The research subject. This study focuses on recent developments (2021-2023) in Russian tax treaty case law.
The purpose of the research. The objective of this research is to analyze the key trends and developments in tax treaty case law in Russia for the last three years.
Methodology. The research is based on the analysis of cases where the commercial courts of circuits and the Supreme court of Russian Federation in 2021-2023 applied Russian double tax treaties (total number – 38 cases).
Main results of the research. The analysis of the tax treaty case law allowed to make a general overview of the relevant judicial practice and identify three strategic areas of law enforcement – development of the beneficial owner concept, issues if qualification of income for the purposes of the application of tax treaties and disputes between withholding agents and taxpayers.
Conclusion. An analysis of judicial practice allows us to conclude that Russia is quite successful in implementing the task of deoffshorization of the Russian economy – this is noticeable both in the geography of the applied agreements and in the content of the issues under consideration. The tax treaty case law is heterogeneous – it includes both simple issues (for example, with obvious mistakes of a withholding agent) and issues on which judicial practice as a whole has already been established (for example, in relation to the beneficial owner concept), as well as quite extraordinary and sometimes difficult questions. It should be admitted that fundamentally new issues of application of double taxation agreements are sometimes not easy for the courts. An analysis of tax treaty case law puts forward the question of the role and risks of a withholding agent – currently the practice does not seem sufficiently balanced in terms of ensuring a balance of private and public interests. For application of double tax treaties procedural issues remain of great importance. Analysis of judicial practice shows that they are crucial both for the withholding agent and the taxpayer.

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1. Introduction

Agreements for the avoidance of double taxation (hereinafter also referred to as agreements, double tax treaties, DTTs) are an important part of the legal regulation of international taxation in Russia [1]. At the same time the texts of these treaties are very concise, and the practice of their application and interpretation by the courts is of particular importance. So it is not surprising that the academic community pays great attention to the analysis of the development of judicial practice on key issues of application of DTTs, and Russian scientists have big experience in participation in international conferences with presentations of Russian tax treaty case law [e.g.: 2, p. 139-160; 3, p. 245-258; 4, p. 399-415; 5, p. 257-268; 6, p. 305-314].

The author analyzes the 2021-2023 double tax treaty case law of commercial courts of circuits and the Supreme Court of the Russian Federation. The article starts with a general description of the analyzed judicial practice. The second part of the article deals with key issues of the examined case law - the development of the beneficial ownership concept and qualification of payments for the purposes of application of double tax treaties. The last part of the article presents disputes between withholding agents (called tax agents in Russian law) and taxpayers. The article concludes with author's considerations on the development of Russian tax treaty case law.

2. General characteristics

In general, the double tax treaty case law of Russian commercial courts can hardly be called numerous - the search for 2021-2023 court decisions of the Supreme Court of the Russian Federation and commercial courts of circuits resulted in 38 cases. This number of cases is generally not comparable with the total number of tax disputes considered by these courts. Thus, if we compare 38 cases with the total number of tax cases considered by commercial courts of circuits in cassation for the same period, then cases related to the application of agreements will amount to slightly less than half a percent. Of the fifteen cases in which cassation appeals were filed with the Supreme Court of the Russian Federation, only one case (the case of PJSC Ural Bank for Reconstruction and Development) was transferred to the Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes. These numbers speak for themselves.

The geography of the applied agreements is quite wide - along with Cyprus (this agreement is still found in court decisions more often than others, but clearly does not dominate) it includes Austria, Belarus, Canada, Czech Republic, France, Germany, Hong Kong, Iran, Japan, Malta, the Netherlands, Poland, Singapore, Switzerland, Turkey, United Kingdom. Interestingly, the vast majority of disputes relate to DTTs with states from the unfriendly countries list, the operation of which was partially suspended at the initiative of Russia in August 2023 [7, p. 21-23].

The tax treaty case law is heterogeneous. There are cases containing obvious errors in the application of the agreements (for example, disputes in which withholding agents believed that they could arbitrarily choose in which of the two states they should pay taxes if the treaty grants both of the states the right to tax[1]), and cases where the courts faced quite complicated issues, for example, the qualification of income for the purpose of identification of the applicable clause of the agreement. In a number of cases, questions of interpretation were not central, and the issue was in literal application of the rules of the agreement to certain factual circumstances.

The majority of tax disputes regarding the application of double taxation agreements considered by the courts are disputes between the tax authority and the withholding agent, that is, disputes in which Russia is the state of the source of income and the tax authorities consider it unlawful to apply the corresponding benefit under the

[1] See two cases of *Microcredit Company "Vyruchai-Dengi" LLC* (judgement of the Commercial Court of the North-Western Circuit of 1 March 2023 № Ф07-1295/2023 in case № А56-50604/022, judgement of the Commercial Court of the North-Western District of 21 February 2023 № Ф07-32007/2023 in case № А56-32007/2022) and the case of *Polimex-Mostostal-Vostok LLC* (judgement of the Commercial Court of the Moscow Circuit of 8 June 2022 № Ф05-29657/2022 in case № А40-35559/2022).

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agreement in terms of full or partial exemption from taxation in Russia. Disputes between the withholding agent and the tax authority usually end in favor of the latter. Also in tax treaty case law several cases were found that, in fact, are not tax disputes, since they represent disputes between companies that do not have tax legal relations with each other - a withholding agent and a taxpayer.

Disputes related to the application of agreements are not always resolved on the basis of its provisions - sometimes the rules of national legislation are of key importance. The traditional stumbling block for the application of double tax treaties is proper confirmation of status of the taxpayers as the resident of the state with which the Russian Federation has a corresponding international treaty [8; 9]. Disputes during the analyzed period were no exception [2].

The case of the *Monetary Authority of Singapore*[3] has shown one of the most unexpected twists from the perspective of the impact of procedural rules on the application of the tax treaty. The Monetary Authority of Singapore is the central bank and regulator of financial institutions in Singapore, and payments to it are treated the same as payments to the Government for purposes of the double tax treaty. In 2017, when paying dividends, the tax agent withheld corporate income tax, which, taking into account changes in the treaty, he should not have withheld. All courts refused to refund the tax to the Monetary Authority of Singapore due to missing the deadline for application for a refund of the excess withheld tax. The question about the withholding of the tax in violation of the tax treaty provisions was not under consideration.

3. Beneficial ownership

The beneficial ownership clause has for a long time been one of the most widespread issues in the application of double tax treaties by Russian commercial courts [10; 11; 12; 13; 14; 15].

In 2021-2023 commercial courts also considered cases in which the application of benefits under agreements was denied due to the taxpayer's lack of beneficial ownership to income. In particular, due to the lack of the beneficial ownership the courts refused to apply benefits in relation to dividends[4] and interest[5] under Russia-Cyprus double tax treaty and in relation to dividends under Russia-Netherlands double tax treaty[6]. The signs of lack of

[2] See the cases of *Yeysk-Priazovye-Port LLC* (judgement of the Commercial Court of the North Caucasus Circuit of 21 April 2021 № Ф08-3210/2021 in case № A32-23798/2020), *JSC Sevmash-Shelf* (judgement of the Commercial Court of the North Western Circuit of 26 August 2021 № Ф07-9669/2021 in case № A05-7568/2020), *Optima JSC* (judgement of the Commercial Court of the Ural Circuit of 23 March 2023 № Ф09-1180/23 in case № A60-19423/2022), *LLC Agronefteprodukt* (judgement of the Commercial Court of the North Caucasus Circuit of 1 November 2023 № Ф08-8522/2023 in case № A32-9895/2022); *Lenstroytrest LLC* ((judgement of the Commercial Court of the North Western Circuit of 9 December 2021 № Ф07-17205/2021 in case № A56-16972/2021, judgement of the Supreme Court of the Russian Federation of 4 May 2022 № 307-ЭС22-3183 in case № A56-16972/2021 on refusal to transfer the case to Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes).

[3] Judgement of the Commercial Court of the Moscow Circuit of 13 June 2023 № Ф05-11133/2023 in case № A40-175343/2022, judgement of the Supreme Court of the Russian Federation of 13 October 2023 № 305-ЭС23-18789 in case № A40-175343/2022 on refusal to transfer the case to Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes.

[4] Cases of *Tagil Beer LLC* (judgement of the Commercial Court of Ural Circuit of 16 November № Ф09-7533/23 in case № A60-34102/2022), *JSC Yuzhuralzoloto Group of Companies* (judgement of the Commercial Court of Ural Circuit of 13 September 2021 № Ф09-6263/21 in case № A76-5391/2020), *JSC UCC Uralchem* (judgement of the Commercial Court of the Moscow Circuit of 3 February 2022 № Ф05-34946/2021 in case № A40-99373/2020), case of *JSC Danone* (judgement of the Commercial Court of the Moscow Circuit of 29 September 2023 № Ф05-22717/2023 in case № A40-133176/2022).

[5] Case *of JSC Maritime Joint Stock Bank* (judgement of the Commercial Court of the Moscow Circuit of 18 May 2022 № Ф05-9067/2022 in case № A40-258255/2020).

[6] Cases of *JSC Chukotka Mining and Geological Company* (judgement of the Commercial Court of the Moscow Circuit of 17 November 2020 № Ф05-18602/2020 in case № A40-282232/2019, judgement of the Supreme Court of the Russian Federation of 12 March № 305-ЭС21-713 in case № A40-282232/2019 on refusal to transfer the case to Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes) and *LLC Northern Gold* (judgement of the Commercial Court of the Moscow Circuit of 9 June 2021 № Ф05-11475 in case № A40-

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the beneficial ownership identified by the courts in these cases generally fit into the standards established by the previous case law.

It was the case of *PJSC Ural Bank for Reconstruction and Development*[7] which introduced a fundamentally new aspects to the concept of beneficial ownership of income. This case dealt with granting the treaty benefits for interest under Russia-Singapore double tax treaty in relation to interest on subordinated loans received by the bank from a Singaporean company.

This is the only case related to the application of double tax treaties which during the period of 2021-2023 was considered by the Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes[8]. It is also very interesting that the courts of the first three instances made decisions in favor of the tax agent (and decisions in favor of the tax agent when applying double tax treaties are extremely rare), where they agreed that the taxpayer was the beneficial owner of the income, but the Supreme Court of the Russian Federation did not agree with this approach and sent the case for re-examination.

When considering the case the Supreme Court of the Russian Federation indicated that in assessing whether the taxpayer (a foreign company) is the beneficial owner of the income a high level of real economic presence and entrepreneurial activity are not important if the recipient of the income performed intermediary functions in the interests of another person. Such companies that have resources, a broad business profile and exist regardless of the intended transit, but act in the interests of another person due to an agreement or other circumstances, have been named "respectable conduits" in the Russian literature [16, с. 38]. Previously in court decisions we mostly saw a denial of the beneficial owner status in respect to foreign companies that did not have signs of real economic activity, i.e. ordinary conduits.

It is very interesting that in this case the courts assessed differently whether the Russian bank knew about the intermediary nature of the Singapore company's activities. During the first round of examination three instances in their decisions indicated that from the concluded agreements it followed that the Singaporean company entered into loan agreements on its own behalf and in its own interests, as an independent participant in civil transactions, without indicating that it was an agent of the parent company from an offshore jurisdiction. Upon re-examination the court[9] found that the bank was aware that the Singaporean company acts as an agent in loan transactions in the interests of its parent holding company - a resident of an offshore jurisdiction with which Russia does not have a double tax treaty, and does not show interest income received from the bank in its total income.

It is difficult to disagree with the fact that a person may not have the beneficial ownership of income and carry out intermediary functions even with a high level of economic presence and high levels of entrepreneurial activity. However this case makes us think about how the risks of subsequent additional tax assessment are commensurate with the real capabilities of the tax agent to verify whether the counterparty has the beneficial ownership to income in a situation when the taxpayer is a completely independent company. The fight against abuses by unscrupulous taxpayers and

244218/2019, judgement of the Supreme Court of the Russian Federation of 4 October 2021 № 305-ЭС21-17222 in case № А40-244218/2019 on refusal to transfer the case to Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes). What these cases have in common is that the courts, within the look-through approach, applied the double tax treaty with Canada and in both cases, the same company was recognized as beneficial owner of the income – it was the Canadian company Kinross Gold Corporation.

[7] Judgement of the Commercial Court of the Moscow Circuit of 19 April 2023 № Ф05-6125/2023 № А40-121109/2022, judgement of the Supreme Court of the Russian Federation of 21 August 2023 № 305-ЭС23-13710 in case № А40-121109/2022 , judgement of the Supreme Court of the Russian Federation of 6 October 2023 № 305-ЭС23-13710 in case № А40-121109/2022.

[8] This court decision was included in the Review of the practice of application by commercial courts of the provisions of the legislation on taxes and fees related to assessing the validity of tax benefits, approved by the Presidium of the Supreme Court of the Russian Federation on 13 December 2023.

[9] Judgement of the Commercial Court of Moscow of 19 February 2024 in case № А40-121109/22-140-2218.

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tax agents should not lead to the fact that the tax agent is practically unable to protect himself from subsequent additional charges by the tax authority, which, during the audit, will receive additional information that was not available to the tax agent.

4. Qualification of payments for the purposes of application of double tax treaties

Passive types of income - dividends, interest and royalties - traditionally occupy a central place in the tax treaty case law of Russian commercial courts. Therefore it is not surprising that the issue of qualification of different payments as a dividend was repeatedly under consideration in judicial decisions in 2021-2023.

For a long time the requalification of payments into dividends has been associated primarily with the consequences of the application of national thin capitalization rules [17; 18; 19, p. 71-72]. In 2021-2023 this category of disputes has lost its leadership, and courts considered questions about the qualification of payments as dividends in other situations. Thus the courts qualified as dividends the difference between the actual value of the share paid to a foreign company when exiting from a Russian company and the initial contribution of this company to the authorized capital of the company (the case of *Larisa-City Firm LLC*[10])), as well as the increase in the nominal value of the participant's share with an increase of the authorized capital at the expense of unallocated profit (cases of *Sovcombank Life Insurance LLC*[11] and *Mir Business Bank JSC*[12]). The last issue is likely to be developed in judicial practice in the very near future, since the case of Mir Business Bank JSC was accepted for consideration by the Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes[13].

In one of the cases the court reclassified royalties as dividends (the case of *Johnson Matthey Catalysts LLC*[14])), and the main argument was that with the conclusion of the royalty agreement the company did not actually acquire any rights that were previously unavailable (and continued to use technological information which was available to the company before the conclusion of the royalty agreement and which the company used free of charge), but only assumed the obligation to pay royalties. Paid but unprovided services are one more example of reclassification into dividends (the case of *Danone JSC*[15]).

In 2021-2023 the commercial courts raised the issues of income qualification not only in connection with the application of double tax treaty articles on passive income. In the case of *Agronefteprodukt LLC*[16] application of the Russia-Turkey double tax treaty put forward the question about the qualification of payments under a vessel charter agreement (charter party) - the courts qualified them as profits of an enterprise from the operation of ships in international traffic. In 2022-2023 the need to rebuild traditional logistics routes led to an increase in sea deliveries [20, p. 25], therefore issues of taxation of income from international maritime traffic have the potential for further appearance in court decisions.

[10] Judgement of the Commercial Court of the Volga Circuit of 24 August № Ф06-7004/2021 in case № А65-27690/2020, judgement of the Supreme Court of the Russian Federation of 14 December 2021 № 306-ЭС21-23651 in case № № А65-27690/2020 on refusal to transfer the case to Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes.

[11] Judgement of the Commercial Court of the Moscow Circuit of 14 September 2023 № Ф05-18371/023 in case № А40-272044/2022.

[12] Judgement of the Commercial Court of the Moscow Circuit of 24 August 2023 № Ф05-16104/2023 in case № А40-243943/2022.

[13] Judgement of the Supreme Court of the Russian Federation of 24 January 2024 № 305-ЭС23-22721 in case № А40-243943/2022.

[14] Judgement of the Commercial Court of the East Siberian Circuit of 9 December 2021 № Ф02-66342021 in case № А33-5437/2020, judgement of the Supreme Court of the Russian Federation of 5 April 2022 № 302-ЭС22-3246 in case № А33-5437/2020 on refusal to transfer the case to Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes.

[15] Judgement of the Commercial Court of Moscow of 27 January 2023 in case № А40-133176/22-116-2258, judgement of the Ninth Commercial Court of Appeal of 13 June 2023 № 09АП-14867/2023 in case № А40-133176/2022, judgement of the Commercial Court of the Moscow Circuit of 29 September 2023 № Ф05-22717/2023 in case № А40-133176/2022.

[16] Judgement of the Commercial Court of North Caucasus Circuit of 1 November 2023 № Ф08-8522/2023 in case № А32-9895/2022.

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The most interesting, in our opinion, was the case of *Coiltubing-Service LLC*[17], which resolved the issue of qualification of payments under an international financial leasing agreement for the purposes of the Russia-Belarus double tax treaty. The final decision in this case was made in favor of the tax agent, but this took more than two years with two "circles" of hearings in all instances of commercial courts.

Payments under an international financial leasing agreement are not directly named in any of the articles of the double tax treaty, and the courts at different stages of the consideration of the case qualified these payments as falling under Article 18 of the agreement "Other income", Article 10 "Interest" and Article 7 "Profit from business activities." It was the last qualification that became final. The stated position of the cassation court was applied in another similar case involving Coiltubing Service LLC[18].

In our opinion the most interesting in the series of court decisions in this case is the explanation of the Supreme Court of the Russian Federation on the relationship between different articles of the double tax treaty. As the court pointed out, the article "Other income" applies to income arising from sources in contracting states that are not mentioned in the previous articles of the agreement, or to cases of receiving income not regulated by other provisions of the agreement, for example, when receiving income from sources in third countries. In turn, Article 7 of the agreement "Business profits" is a general rule for taxation of profits from business activities of enterprises and is applied unless other articles establish other rules for taxation of a particular category of income from which profit is generated. In the latter case special rules take precedence over general ones.

Qualifying income for tax purposes, while seemingly simple, can turn out to be a very complex theoretical and practical problem. Distributive rules are not organized within the framework of agreements in any systematic way, however, within the rules one can distinguish general and special ones [21, p. 61 - 62]. In this regard, it is encouraging that individual papers by Russian authors on this issue are published [22; 23; 24, p. 110-111], however, the main work on the theoretical understanding of the system of distributive rules seems to be ahead.

5. Disputes between tax agents and taxpayers

According to the legal position of the Supreme Commercial Court of the Russian Federation in the event of failure to withhold tax when making payment to a foreign person, both tax and penalties may be collected from the tax agent, accrued until the obligation to pay the tax is fulfilled[19]. The legal relationship between the tax agent and the taxpayer is not a tax one, and after paying the tax for the taxpayer, the tax agent has the opportunity to use civil law mechanisms and recover the appropriate amounts from the taxpayer whose tax obligation he fulfilled at his own expense.

The literature notes that negative consequences for the tax agent and subsequent disputes with the taxpayer may be associated with various circumstances - the tax agent's error in assessing the documents submitted by the foreign taxpayer, the failure of the foreign company to provide the requested documents, or the provision of unreliable documents and information [25, p. 42-43]. Different situations are also encountered in court decisions of 2021-2023.

As follows from the court decisions in the case between *Kuchuksulfat LLC* and *Kapok Investment Limited*[20], in 2018, the Russian company, which

[17] Judgement of the Supreme Court of the Russian Federation of 18 October 1021 № 302-ЭС20-7898 in case № А33-5439/2019 became the final in the case.

[18] Judgement of the Commercial Court of the East Siberian Circuit of 18 November 2021 № Ф02-3139/2021 in case № А33-34508/2019.

[19] Paragraph 2 of the Decision of the Plenum of the Supreme Commercial Court of the Russian Federation of 30 July 2023 № 57 «On issues of application of the Part One of the Tax Code of the Russian Federation by the commercial courts».

[20] Judgement of the Seventh Commercial Court of Appeal of 1 September 2021 № 07АП-7207/2021 in case № А03-10399/2020, Judgement of the Commercial Court of the West Siberian Circuit of 7 December 2021 № Ф04-7536/2021 in case № А03-10399/2020, judgement of the Supreme Court of the Russian Federation of 5 April 2022 № 304-ЭС22-2647 in case № А03-10399/2020 on refusal

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acted as a tax agent for the dividends it paid to the Cypriot company, "decided to additionally charge income tax" for the period 2005- 2017 at a rate of 10% instead of the 5% rate applied during this period. The "additional charge" was due to the fact that, at the request of the Russian company, the Cypriot company provided contradictory information about the circumstances confirming the fulfillment of the conditions for applying the reduced rate. The courts supported the tax agent, whose actions made it possible to withhold tax for the period from 2005 to 2017, for a significant part of which the tax authority had already lost the ability to collect tax.

The court indicated that the actions of the tax agent aimed at replenishing budget losses are reasonable and lawful, and there are no grounds for concluding that the tax agent in this situation was obliged not to fulfill the obligation to transfer tax amounts to the budget with reference to the impossibility of tax collection due to the expiration of the time limitations, the impossibility of conducting tax audit and other similar circumstances. The courts recalled that the expiration of deadlines and the impossibility of tax audits do not terminate the obligations to pay and withhold taxes, and the court associated the beginning of the statute of limitations with the submission in 2018 of contradictory information by a foreign company when confirming the right to benefits under the agreement.

In the second case between the same companies[21] we see the development of the history of interaction between the tax agent and the taxpayer: in 2019 Russian company considered that the Cypriot company could not prove that it was the beneficial owner of dividends and recalculated the tax for the period from 2016 until 2018 without the use of double taxation agreements. Court decisions were again made in favor of Russian company.

Another case in which the tax agent claimed against the taxpayer is the case of *Corporate Finance Bank LLC* and *Netcore Solutions Limited*[22]. This case dealt with application of the Russia-Cyprus double tax treaty in relation to interest under a loan agreement, and the tax agent, at a certain point, considering that the Cypriot company is not the beneficial owner of the income, and a Russian citizen being the beneficial owner of the income, recalculated and withheld tax for the period from 2016 to 2019.

It is interesting that in all these three cases, a tax audit was not carried out in relation to the tax agent - basically the tax authority only requested from the tax agent certain documents and information that the Russian company did not have and requested from a foreign company.

However tax agents are not always successful in their disputes with the taxpayer. In the case of *RT-Inform LLC*[23] the tax agent did not withhold the amount of tax when transferring the license fee to a foreign company and, after paying the tax at his own expense, decided to make a claim against the counterparty. The court rejected the claim due to the expiration of the statute of limitations. In this case the court linked the beginning of the limitation period with the date of payment of income to the foreign company - in the court's opinion it was at the moment of the original payment that the tax agent, who was obliged to know and comply with tax legislation and tax treaty provisions, should have learnt about the violation of its right, i.e. about the occurrence of unjust enrichment on the defendant's side. The court considered the position that the limitation period should be calculated from the date of presentation of the plaintiff's demands by the tax authority to be ungrounded and indicated that neither the tax authority's requirement to provide

to transfer the case to Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes.

[21] Judgement of the Commercial Court of the West Siberian Circuit of 8 April 2022 № Ф04-1542/2021 in case № А03-2893/2020.

[22] Judgement of the Commercial Court of the Moscow Circuit of 23 September 2022 № Ф05-22538/2022 in case № А40-148303/2021.

[23] Judgement of the Eleventh Commercial Court of Appeal of 9 December 2022 № 11АП-18306/2022 in case № А65-17892/2022, judgement of the Commercial Court of the Volga Circuit of 28 March 2023 № Ф06-1517/2023 in case № А65-17892/2022, judgement of the Supreme Court of the Russian Federation of 26 July 2023 № 306-ЭС23-12068 in case № А65-17892/2022 on refusal to transfer the case to Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes.

explanations regarding the grounds for the failure of the plaintiff as a tax agent to withhold income tax from the defendant, nor the plaintiff's payment of the corresponding amount to the budget of the Russian Federation cannot serve as a basis for changing of the beginning of the limitation period.

Thus we see that in 2021-2023 the commercial courts considered several disputes between Russian and foreign companies, which generally make us think about the complex system of legal relations arising with the participation of the tax authority, tax agent and taxpayer, as well as the role of the tax agent in tax administration in cross-border situations.

6. Conclusion

An analysis of judicial practice allows us to conclude that, in general, the Russian government is quite successful in implementing the task of deoffshorization of the Russian economy - this is noticeable both in the geography of the agreements applied and in the content of the issues under consideration. However, taxation of dividends and interest is still a strong leader among other aspects of international taxation.

The practice of application of double tax treaties by commercial courts is heterogeneous - it contains both simple issues (for example, with obvious mistakes of a tax agent) and issues on which judicial practice as a whole has already been established (for example, in relation to the beneficial ownership concept), as well as quite extraordinary and sometimes difficult questions. It should be admitted that fundamentally new issues of application of double tax treaties are sometimes not easy for the courts.

In our opinion, the analysis of judicial practice makes us put forward the question about the role and risks of the tax agent when applying double tax treaties.

On the one hand it is impossible not to note the increase in requirements for verification by a tax agent of compliance with the conditions for tax treaty benefits, first of all with the status of the beneficial owner of the income. The development of case law in relation to “respectable conduits”, who are independent from the taxpayer, raises the question about the extent of the possible protection of the tax agent from subsequent claims by tax authorities and the price of meeting tax compliance requirements.

On the other hand cases of the use of civil legal mechanisms with the participation of a tax agent and a taxpayer in relation to debt, the possibility of collecting which within the framework of traditional tax administration mechanisms is doubtful, cause some concern. In the cases considered, in the absence of a tax audit, the “collection” of tax for past periods is actually carried out by the tax agent. I would like to express the hope that Russian courts would find a fair balance of private and public interests in such a delicate interweaving of civil law disputes and tax administration.

Finally it should be noted that procedural issues remain of great importance in application of double tax treaties. And, as an analysis of case law shows, it is necessary for both the tax agent and the taxpayer to monitor compliance with the relevant deadlines and procedures.

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