2014 EATLP Congress
RUSSIAN NATIONAL REPORT

Presented by Prof. Dr. D.V. Vinnitskiy & Prof .Dr. N. A. Sheveleva

1. The sources of the exchange of information in Russia

The Russian Federation has a wide net of bilateral international treaties on avoidance of double taxation which include provisions on exchange of information. At present, there are 80 ratified treaties with states representing all the regions of the world. However, the official web-page of the Russian Federal Tax Service (FTS) has so far mentioned only 77 of them.[1] The Exchange of Tax Information Portal gives 88 - both ratified and non-ratified - tax treaties[2] which contain provisions on the exchange of information. However, three of them are actually Protocols to the earlier-concluded tax treaties and widen the scope of application of the rule on the exchange of information (the Protocol of 1 October 2010 ratified on 2 April 2012 to the treaty with Cyprus, the Protocol of 21 November 2011 to the treaty with Luxembourg and the Protocol of 25 September 2011 to the treaty with Switzerland).

The analysis of the system of the RF tax treaties shows that among them there are tax treaties which follow the OECD Model (e.g., with the West European countries) or the UN Model (e.g., with a number of Asian states[3]). The content of the treaty provisions on the exchange of information is greatly determined, first of all, by the date of conclusion of the respective treaty. Hence, only the treaties concluded on the basis of the 2005 or 2008 versions of the OECD Model contain the rule on the information which is held by a bank or other financial institution (para. 5 Article 26 of the Model). Besides, the treaties concluded with account of the new OECD Model have an additional provision that "… the other Contracting State shall use its information gathering measures to obtain the requested information, even though the other State may not need such information for its own tax purposes…" (para. 4 Article 26 of the Model)

Among the RF tax treaties the treaty with Switzerland stands out, as it was the only one which did not have a provision on the exchange of information (before the signing of the above-mentioned Protocol of 25 September 2011). The most laconic version of the article on the exchange of information (consisting only of one paragraph) may be found in the treaty with the Netherlands, but nevertheless on the basis of its content it makes the effective exchange of information possible (and not only with regard to the taxes covered by the treaty), which is confirmed by case law.[4]

[1] http://www.nalog.ru/mnsrus/msmno/mpa/dn//.
[2] http://eoi-tax.org/jurisdictions/RU#agreements.
[3] Azerbaijan, Lebanon, Vietnam.
[4] See., e.g., an analysis of the example in the following article: Nagornaya E. N. Extra-judicial procedure, "Nalogovye spory: teoriya i praktika", 2007, No5 (Нагорная Э.Н. Производство по

Most of the Russian tax treaties include an article concerning the exchange of information which consists solely of two paragraphs. As a rule, in these treaties the respective article follows Article 26 of the 1977 OECD Model. For this reason, the rules on the exchange of information in these tax treaties concern only taxes covered by the treaty and not taxes of every kind. Besides, in these cases tax treaties provide that requested information should be "necessary" but not "foreseeably relevant", as is provided for in the later treaties.

At present, only seven tax treaties follow the latest OECD Model (regarding the exchange of information article). In all cases these are the treaties in which the version of Article 26 was specifically changed by a separately signed protocol:

- Protocol of 1 October 2010 (ratified 2 April 2012) – Cyprus;
- Protocol of 21 November 2011 – Luxembourg;
- Protocol of 25 September 2011 – Switzerland;
- Protocol of 27 April 2007 (ratified 9 April 2009) – the Czech Republic;
- Protocol of 13 June 2009 (ratified 1 April 2012) – Italy;
- Protocol of 15 October 2007 (ratified 22 December 2008) – Germany;
- Protocol of 24 October 2011 – Armenia.

It is important that the given protocols provide for the obligation not to decline an information request even if there is no domestic interest of the contracting state being requested (para. 4 Article 26 of the OECD Model), and also include a provision on bank (or other financial institution) information (para. 5 Article 26 of the OECD Model).

The treaties with Denmark (8 February 1996) and Slovakia (24 June 1994) may be singled out as a separate group though they were concluded quite a long time ago (in comparison with other Russian tax treaties) and no special protocols improving the exchange of information provision have been signed with regard to them. They do, however, contain special clauses that were similar to the (then) para.4 Article 26 of the OECD Model. A similar provision in this sense (but not coinciding in its wording with the OECD Model) may be found also in para.3 Article 26 of the tax treaty with Algeria.

As a rule, the existing Russian bilateral tax treaties never include provisions on the automatic or spontaneous exchange of information. However, several exclusions from this rule may be found. For instance, the following provision on automatic exchange of information in the tax treaty with India is worth noting: "The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both. The competent authorities of the Contracting States shall agree from time to time on the list of the information or documents which shall be furnished on a routine basis" (para. 2 Article 26 of the treaty). Besides, para.4 Article 25 of the tax treaty with Mexico contains a spontaneous exchange of information provision.

пересмотру судебных актов по вновь открывшимся обстоятельствам // Налоговые споры: теория и практика. 2007. № 5).

We should also pay attention to the group of tax treaties with the USA (17 June 1992), Canada (5 October 1995), Mexico (7 June 2004), Sweden (15 June 1993), Denmark (8 February 1996) and Slovakia (24 June 1994). In these treaties the respective article provides that on request, the competent authority of a contracting state must provide information in the form of deposition of witnesses and/or authenticated copies of original documents. These provisions of the treaties may be important, in particular, for Russia, taking into account the requirements of domestic law regarding evidence submitted to the commercial courts, as well as to the courts of general jurisdiction (e.g. in the framework of criminal procedures).

As an example of the existing problem we can mention the Judgment of the RF Supreme Commercial Court of 18 January 2008 № 14556/07 on the dispute between the Inspection of the Federal Tax Service of the city of Petropavlovsk-Kamchatskiy and «Fishing company «Akros». In justifying a decision which entailed the additional payment of profit tax, the tax authority used information about the relations of the given company with Norwegian residents which came from the tax authorities of Norway. However, on the basis of Articles 75 and 255 of the RF Code of Commercial Procedure the courts characterized this evidence as inappropriate. According to the facts of the case, "the Russian tax authorities received from Norway the official information on the results of the conducted inspections prepared by the tax authorities of Norway, and the copies of documents supposedly made by the Russian taxpayer concerning the supplies of fish produce to Norwegian residents in 2000 – 2001 and the payments for this produce, certified by the officials of the tax authority of Norway". However, these documents were presented without consular legalization and/or apostille which violates, as the court held, the provisions of the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. The RF Supreme Commercial Court held that the provisions of Article 26 of the Convention between the Kingdom of Norway and the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital (26 March 1996) may not be considered to the reason for neglecting the requirement of certifying the authenticity of the signature of an official, who signed the documents, the seal or the stamp.

The final conclusion of the RF Supreme Commercial Court was also quite interesting. The Court held: "the above-mentioned article on the exchange of information between the competent authorities of the states concerns the fulfilment of the provisions of the given Convention on the taxation of the residents of one state in the other one. In this case the tax authorities of Norway conducted the inspection of the Norwegian residents at the request of the Russian Federal Tax Service. This inspection was not connected with solving the issues which are necessary for applying the provisions of the Convention of 26 March 1996". This reasoning, in our opinion, is quite debatable and may lead to different conclusions and interpretations, especially if we take into account the fact that the dispute concerned the profit tax in a cross-border situation involving a Russian resident and Norwegian residents, i.e. the situation was within the subjective and objective scope of the respective tax treaty.

An analysis of the Russian tax treaty network would not be sufficient if we do not take into account the special bilateral treaties on the exchange of information relevant for taxation which were concluded by the Russian Federation with a number of states

(first of all, these are Member States of the Commonwealth of Independent States/CIS and other former Soviet republics). The treaties follow their own model; the TIEA Model[5] was not used in this case. Also, there are several multilateral treaties concluded in the framework of the CIS which provide for the exchange of tax information. In general, these treaties (bilateral and multilateral) fully support the effective exchange of information between the contracting states. Of special importance here is such a treaty with Georgia (of 9 December 1997), as the "standard" treaty on the avoidance of double taxation (4 August 1999) containing Article 26 is still not ratified by the parties.

The effective treaties of this kind with the following countries are:

- Azerbaijan of 9 January 2001 and of 25 January 2002;
- Georgia of 9 December 1997 and of 1 July 1994;
- Kyrgyzstan of 26 August 1999;
- Armenia of 25 April 1996 and of 11 March 1994;
- Belarus of 28 July 1995;
- Kazakhstan of 30 September 1998 and of 6 July 1998;
- Moldova of 8 October 1996 (there are two treaties concluded on the same date on cooperation and exchange of information and on cooperation and mutual assistance);
- Tajikistan of 23 April 1996 and of 14 January 1998;
- Uzbekistan of 11 November 1993 and of 25 April 1995;
- Turkmenistan of 21 January 2002;
- Ukraine of 28 May1997 and of 19 January 1999;
- Bulgaria of 2 March 2003;
- Cuba of 21 January 2004;
- Mongolia of 18 May 2001;
- Greece of 12 October 2000.

Besides, there are two important regional multilateral treaties on this topic (in the framework of regional economic integration), to which Russia is a party:

- Agreement between the tax services of Belarus, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan on mutual cooperation (Minsk, 30 September 1998);
- Agreement between the tax services of Belarus, Kazakhstan, Kyrgyzstan, the Russian Federation on mutual assistance (Bishkek, 25 March 1998).

There are also multilateral agreements connected with the exchange of information within the framework of the Customs Union of the Russian Federation, Kazakhstan and Belarus, but they are mostly relevant for the cross-border indirect taxation within the Customs Union. Moreover, the practice of direct exchange of tax information between regional tax authorities of the Member States of the Customs Union is quite common. This exchange of information may be sometimes quite informal and concerns both direct and indirect taxes. (See: **Section 2 of the Report**)

[5] http://www.oecd.org/ctp/exchangeofinformation/taxinformationexchangeagreementstieas.htm.

In professional databases we may also see information about the existing "technical" agreements between tax authorities on administrative support and exchange of tax information. Obviously, the practice of concluding such agreements was developed by the former Department of International Cooperation and exchange of information of the RF Ministry of Taxes and Duties (now – the Federal Tax Service of Russia), but at some stage was ceased. But several such agreements have been concluded: with France of 28 January 2004, Norway of 22 September 2004, Poland of 26 April 2004, Sweden of 18 September 2000, Denmark of 21 January 2002. Currently, we do not have information that any evidence received by the Russian tax authorities in accordance with the given agreements has ever been presented within the framework of court proceedings.

An important recent event in the area under discussion is the fact that on 3 November 2011 Russia joined the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Strasbourg, 24 May 2007); however, this instrument has not yet been ratified by Russia.[6] The importance of the changes for the Russian legal system lies in the fact that after the ratification of the given Convention additional forms of gathering tax information, including automatic and spontaneous exchange of information, will be available.

On the whole, this general analysis speaks of the consistency in the Russian Federation policy aimed at widening its participation in the international exchange of tax information. Among the arguments in favour of this conclusion should be mentioned the new Russian Model treaty on the avoidance of double taxation approved of by the Decree of the RF Government of 24 February 2010 №84, as the basis for negotiations on concluding new bilateral tax treaties and also protocols to the existing ones. This Model treaty follows the 2005/2008 version of the OECD Model Convention with regard to the wording of Article 26 on exchange of information. The former Russian Model Convention of 28 May 1992 was mostly in line with the old version of the OECD Model.

The existence of this model and of the above-mentioned bilateral and multilateral tax treaties is quite important for the effective participation of Russia in the international exchange of information as its domestic legislation contains the strict limitations (see: Federal Law of 27 July 2006 No 152-FZ "On personal data") in providing personal information (including tax information) in cross-border situations. But it remains important (even in the case of the special international treaty on the exchange of tax information) that the state receiving the information from the Russian authorities is able to secure its proper protection (Article 12 of the above-mentioned Law).

An analysis of the available sources concerning the real work of the mechanisms of the exchange of information shows that the situation here may vary: with some states there is actually no exchange of tax information at all, with others – it already exists and is quite active.

[6] http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=127&CM=1&DF=&CL=ENG.

For instance, the secretariat of Inter-Parliamentary Assembly of the Eurasian Economic Community (EurAsEC) gives information about the number of requests for tax information received by the Russian tax authorities:

Year	Requests received	Including those from the tax authorities of the EurAsEC Member States
2008	460	96
2009	286	72
2010	252	57
2011 (until 19.05.2011)	128	19

As for the Republic of Belarus and the Republic of Kazakhstan, as was mentioned above, a practice of the exchange of information at the level of regional tax authorities developed there. According to some estimations the number of the requests from the Republic of Belarus in this format reached about 10,000 a year in 2009 and 2010; from Kazakhstan it was much lower – up to 40 requests.[7] **(See: Section 4 of the Report)**

2. The administrative cooperation in tax matters under EU Law / EurAsEC Law

Russia is not a Member State of the EU and EU Law is not applicable in the country. However, taking into account the fact that the Russian Federation participates in the processes of economic integration within the framework of the Customs Union and the Eurasian Economic Community (EurAsEC) it seems important to compare the level of cooperation between the tax authorities in the EU and EurAsEC.

From this perspective we could point out that by the end of 2013 a certain legal basis of this cooperation had been developed in the EurAsEC. In particular, the following special treaties and agreements were concluded:

- the Treaty on the Customs Union and the Common Economic Space (*Moscow, 26 February 1999);*
- the Treaty on the establishment of the Eurasian Economic Community (*Astana, 10 October 2000);*

[7] There are no exact statistics on the matter, so, experts give rough estimations about the number of processed requests at the regional level.

- the Agreement on exchange of information between tax and customs authorities of the Eurasian Economic Community Member States (*Almaty, 25 January 2002);*
- the Protocol on exchange of information about control over transfer pricing between tax and customs authorities of the Eurasian Economic Community member states (*Moscow, 6 June 2006)*[8]*;*
- the Protocol on exchange of operational information concerning compliance with tax legislation between tax administrations of the states – parties to the Treaty of 29 March 1996 (*Astana, 16 June 1998);*
- the Agreement among the State Tax Committee of the Republic of Belarus, the Tax Committee at the Ministry of Finance of the Republic of Kazakhstan, the State Tax Inspectorate at the Ministry of Finance of the Kyrgyz Republic, and the State Tax Service of the Russian Federation, and the Tax Committee at the government of the Republic of Tajikistan, on mutual cooperation (*Minsk, 30 September 1998);*
- the Protocol on application of cryptographic facilities for electronic data transmission between tax administrations of EurAsEC Member States (*Cholpon-Ata, 15 September 2007).*

The development of exchange of tax information in the EurAsEC is coordinated by the Council of Heads of Tax Services of the EurAsEC Member States. The latter holds regular meetings and works out recommendations. In particular, the following documents have been developed though not yet adopted in their final versions:

- the Concept of the main Guidelines on exchange of information for Tax Services of the EurAsEC Member States;
- the Procedure of exchange of information between Tax Services of the EurAsEC Member States in regard to taxation of individuals;
- the Procedure of exchange of information in regard to the confirmation of export supplies of the exporters of the EurAsEC Member States;
- the Procedure of exchange of information in regard to the investments of the legal entities of the EurAsEC Member States.

The available press-releases and the minutes of the meetings of the Council show that the development of exchange of tax information is one of the key issues discussed at its meetings. The recent meeting was held in October 2013 and it examined the draft Procedure of exchange of tax information in regard to the property owned by foreign citizens of the EurAsEC Member States.

3. The collection and exchange of information under anti money laundering legislation

Since 2001, when Federal law of 7 August 2001 № 115-FZ "On the prevention of laundering of criminal incomes and terrorist financing" was adopted, there has been

[8] Entered into force after the third notification of performance of intrastate procedures, for other states – after notifications of performance of intrastate procedures are delivered to the depositary

formed the respective Financial Intelligence Unit in Russia - the **Federal Service of Financial Monitoring (Rosfinmonitoring)**[9]. Banks, insurance organizations, communication agencies and etc. should cooperate with it. This system covers actually all the spheres of economy and, in particular, the transactions with all foreign jurisdictions. The Rosfinmonitoring, in case of receiving the information giving grounds to consider the transactions performed to be aimed at money laundering, has to forward this information to the tax authority.

The Russian Federation participates in the work of the Egmont group of Financial Intelligence Units (FIU)[10] which unites FIUs of 139 jurisdictions and makes it possible for its members to exchange information via a specially protected communication channel.

In fact, the Rosfinmonitoring interacts with FIUs of 90 countries and jurisdictions in accordance with the respective international treaties or on the basis of the principle of reciprocity (see, in particular: the Directive of the Russian Government of 30 October 2010 № 1922-r "On Model agreement between the Federal Service of Financial Monitoring and the competent authority of a foreign state or another entity entitled to conclude international treaties on interaction in counteracting legalization (laundering) of the incomes received through criminal ways and terrorist financing").

The most intensive exchange of information is carried out with the FIUs of Austria, Belarus, Belgium, Cyprus, Latvia, Ukraine, France, and the USA. Every year the Rosfinmonitoring receives from its foreign counterparts about 1000 requests for information. Approximately the same number of answers are sent by the Rosfinmonitoring to the foreign FIUs. In 2012 the exchange of information increased by 20%, in the first six months of 2013 – by 23% more.[11]

However, along with this there is a risk of violating by the Rosfinmonitoring the individual's right to privacy guaranteed by Art.8 of the Convention of Human Rights and Freedoms (ECHR). For instance, in accordance with the Russian «anti-legalization» legislation the operations of the individuals, in regard to whom there is information of their involvement in extremist activity or money laundering, have to be blocked. For this it is necessary to communicate the list of such persons and their identifications to all the organizations performing operations with money and property. For this purpose the list of such persons becomes public and is put on the web-page of the Rosfinmonitoring[12], all the organizations performing operations with money and property have to take it into account.

However, no proper guarantees have been formed to prevent a random entry into this list as not only those found guilty but also suspects may be put into it, thus, the damage to business reputation is not excluded. For instance, there are publications about the claims of some organizations which were groundlessly put into this list and

[9] See: Decree of the RF President of 13.06.2012 № 808: http://www.pravo.gov.ru.
[10] The Egmont Group of Financial Intelligence Units // http://egmontgroup.org/.
[11] See: http://www.fedsfm.ru/activity/bilateral-cooprtation
[12] http://fedsfm.ru/documents/terrorists-catalog-portal-act.

which consider that their business reputation was damaged[13]. There are several court disputes connected with this issue[14].

4. The exchange of information in practice

To evaluate the efficiency of the exchange of tax information it is necessary to turn to the statistics characterizing the scale and the speed of the information exchange. However, neither the RF Ministry of Finance nor the RF Federal Tax Service publish any regular statistics concerning the requested and requesting information as well as the average period of time to prepare the replies. But we can get some general idea from the interviews of tax officials and the publications of experts in this field:

The Moscow branch of the Federal Tax Service gives the following data[15]:

1) 90% of all requests in 2007 are the requests of the Tax Service of the Republic of Belarus (such a great number of the requests in 2007 is determined by the fact that automatic exchange of information for collecting indirect taxes in the Customs Union was not yet established properly in this period and this disadvantage was compensated in this form);

2) in 2007 foreign jurisdictions satisfied 1315 requests from Russia, in 2006 – 536 requests: 30% of the requests were sent to the Republic of Belarus, 13% - to Kazakhstan, 19% - to other countries of the former USSR, 39% - to other countries (Western Europe, the USA and others);

3) the periods of time to satisfy the requests: Belarus – about 3 months; other countries of the former USSR – about 6 months; other countries – 10-15 months.

Due to the introduction of the automatic exchange of information on indirect taxes in export operations with Kazakhstan and Belarus (in the framework of the Customs Union) after 2009, the number of requests from these countries has decreased significantly.

As for the Russian Federation on the whole the RF Federal Tax Service gives the following statistics:

1) Requesting information by the Russian tax authorities from foreign jurisdictions[16]:

In 2009 – 1069 requests (22,6% are not satisfied);

In 2010 – 975 requests (28,8% are not satisfied);

In 2011 – 669 requests (24% are not satisfied);

In 2012 – 898 requests (30,8% are not satisfied);

---

[13] http://www.kavkaz-uzel.ru/articles/189209/.

[14] See: the decision of the Meshyanskyi district court of Moscow of 23.01.2012 on the claim of the Kabardino-Balkar regional organization to the Rosfinmonitoring and the Editorial Board of the «Rossiyskaya Gazeta».

[15] Moscow tax authorities are helped from abroad // The newspaper «Accounting. Taxes. Law» № 18, 2008 (see: the electronic version of the article: http://www.gazeta-unp.ru/reader.htm?id=16899&token=4797db31-bcaa-11a0-4655-2d0181f38202&ttl=7888).

[16] See: «Vedomosti» № 221 (3483), 28.11.2013.

In 2013 (the first six months) – 469 requests (47% are not satisfied).

2) The information concerning the requests received by the Russian tax authorities from the foreign jurisdictions refers to earlier periods. Deputy head of the Office of international cooperation and information exchange of the RF Ministry of Taxes and Charges I. V. Zolotoryova in her interview in 2004[17] said that in 2002 more than 2000 requests from foreign tax authorities had been processed, in 2003 – more than 5000 requests. And again the main countries requesting information are Belarus and Kazakhstan.

In regard to the speed of satisfying the requests by some foreign jurisdictions, the Head of the Office of transfer pricing and international cooperation of the RF Federal Tax Service D. V. Volvach said that, in particular, with the Republic of Cyprus, they had managed to achieve the time periods to reply of **1-2 months**[18].

5. The new era of the automatic exchange of information

Automatic exchange of tax information which is declared as a promising direction of cooperation of tax authorities supported by the G20[19] is starting to be put into practice in the Russian Federation. At present we could mention three directions in which the work is being done and the results can be seen.

Firstly, establishing automatic exchange of tax information in accordance with the Multilateral Convention of the European Council and the OECD on mutual administrative assistance in tax matters. The officials of the Russian Federal Tax Service inform about the work being done and the prospects to start the respective exchange in 2015[20].

There is also some information that with some countries the automatic exchange of tax information[21] in the standard of STF2.1[22] has already started (at least, the practical aspects of such exchange are being discussed).

This is also confirmed by the head of the Office of transfer pricing and international cooperation of the RF Federal Tax Service D. V. Volvach who informed that in 2013 they would start testing the automatic exchange of information between the RF and the OECD countries[23].

---

[17] See: Russian tax courier, № 15, 2004 (electronic version: http://www.rnk.ru/journal/arcives/2004/15/nalogovoe_administrirovanie/nalogovyj_kontrol/nalogoviy_kontrol_v_sphere_vneshneekonomicheskoy_deatelnosti_stanet_bolee_effektivnim71392.phtml).

[18] The Round Table «De-offshorization of the Russian economy: the evaluation of the experts»: http://www.council/gov/ru/press-center/video/24066/

[19] Addressing BEPS, Tackling Tax Avoidance, and Promoting Tax Transparency and Automatic Exchange of Information: G20 Leaders' Declaration (September, 2013): http://en.g20russia.ru/load/782795034

[20] The participants of the Roundtable of the Russian public movement "People's front «For Russia» have discussed the problems of the de-offshorization of the economy": http://nalog.ru/rub_mns_news/4423686/

[21] The issues of exchange of information have been discussed in St. Petersburg at the meeting of the Russian Finnish taskforce // http://nalog.ru/rub_mns_news/4294809/

[22] The OECD Standard Transmission Format Version 2.1 for international information exchange in taxation // http://www.oecd.org/ctp/exchange-of-tax-information/OECD-STF-v2.1-User-Guide.doc

[23] The Round Table «Deoffshorization of the Russian economy: the expert evaluation» // http://www.council.gov.ru/press-center/video/24066/

Secondly, automatic exchange of tax information is carried out in the Customs Union in regard to indirect taxes in export and import operations. A special information resource "Customs Union exchange" has been created which functions on the basis of agreements achieved within the framework of the Customs Union[24].

One can get familiar with how this mechanism works in the relevant methodological recommendations[25].

Thirdly, the Russian Government took a decision on developing and concluding an international treaty on bilateral interaction in implementing the Foreign Account Tax Compliance Act of the USA (FATCA)[26]. Thus, the Russian tax authorities have already been given the right to request from the Russian banks the information about the accounts of non-residents and pass it abroad on the basis of international treaties[27]. Besides, the RF Ministry of Finance and the Central Bank of Russia should submit to the RF Government in January / February 2014 the Draft Protocol to the US – Russia Double Tax Treaty connected with implementation of the FATCA rules[28]. This way of implementing the FATCA rules seems to be the only possible solution in the light of the Russian domestic legislation on personal data protection and bank secrecy.

6. Joint audits and multinational audits

Joint and multinational audits may be another effective form of international cooperation between tax administrations. The international treaties concluded and ratified by the Russian Federation do not oblige the country to exercise such audits. However, such an obligation will arise after the Convention of the European Council and OECD on mutual administrative assistance in tax matters is ratified.

At present the Russian tax legislation is not adopted to such tax control. To prepare for such procedures the RF Ministry of Finance has developed draft amendments to the RF Tax Code which provide for the possibility of participation of

[24] See: the Agreement on principles of collecting indirect taxes in the course of export and/or import of merchandise, performance of work and rendering of services in the Customs Union (Moscow, 25 January 2008). (Enters into force per the Protocol on the procedure for bringing into force international treaties aimed at establishment of the contractual framework of the Customs Union, withdrawal and accession to them of 6 October 2007, and is subject to application from January 1 of the year following the year of entry into force of the Protocols specified in articles 3, 4, 5, and 6 of this Agreement, but not before entry into force of the Treaty on establishing the Common Customs Territory and the Customs Union, of 6 October 2007).
See also: the Protocol of 11 December 2009 on exchange of information in electronic form between the tax authorities of the Member States of the Customs Union in regard to the payments of indirect taxes, «Finansovaya Gazeta», № 30, 22.07.2010.

[25] See: Directive of the Russian Federal Tax Service of 14 May 2013 № MMV7-2/173@ «On the amendments to the Directive of the Russian Federal Tax Service of 18 January 2001 № MMV7-2/19@».

[26] See: http://government.ru/orders/8919.

[27] See: Article 86 of the RF Tax Code in the version of Federal Law of 29.06.2012 № 97-FZ.

[28] See: the treaty between the RF and the USA of 17 June 1992 "On double tax avoidance and prevention of evasion from taxes on incomes and capital".

foreign tax administrations in the audits in Russia if it is stipulated by the relevant international tax treaty[29].

The given Draft law provides for off-site and on-site audits that may be held with the participation of the tax administration of a foreign state at its request in accordance with an international tax treaty.

Though the Draft law provides for the participation of a foreign tax administration in an audit it does not specify its powers. We may suppose that if these specifications are not included in the Draft law the representatives of a foreign jurisdiction are destined to be observants or consultants who are not entitled to interrogate, obtain documents, hold examinations and etc.

The procedure and conditions of the participation of a foreign tax administration in audits in the Russian jurisdiction will be adopted by the Russian Federal Tax Service.

7. & 8. The "Realpolitik": tax solution of equivalent effect alternative to exchange of information and the issue of legitimacy

The law on criminal investigation[30] regulating the activities of state authorities (police, security service and others) in obtaining public and secret information was amended in 2013 with the rule according to which the results of the investigation may be sent to tax authorities to control the compliance with tax legislation.[31]

It is supposed that this information will be used for planning and organizing audits and taking other measures of tax control. Taking into account the fact that the Russian Federal Security Service and Intelligence Service have the right to undertake investigation it is quite possible that some information received in the framework of such activity may be received on the territory of a foreign state or from foreign persons and in this way may become an alternative to the "standard" forms of exchange of tax information in accordance with the double tax treaties.

Moreover, in accordance with the Ruling of the Plenum of the RF Supreme Commercial Court "On the application of the provisions of Part I of the RF Tax Code" of July 2013 the results of criminal investigation may be used as evidence for justifying additional payments of taxes.

(In the course of criminal investigation some information may be received from agents and whistleblowers whom the respective authorities can pay rewards. From the perspective of tax legislation such a reward is an income of an individual and is taxable by income tax (there is no exemption in the RF Tax Code), however, *de facto* such an income is not possible to tax as all the collaboration with such persons is a secret with limited access and the transfer of the information on the income of such persons to tax authorities is prohibited.)

[29] See: the Draft law "On amendments to Article 87 of the RF Tax Code»: http://www.rg.ru/2013/07/09/proekt-nalog-site-dok.html.

[30] See: Federal law of 12 August 1995 № 144-FZ.

[31] On amendments to certain legal acts of the Russian Federation in regard to counteracting illegal financial operations: the Federal Law of 28 June 2013 № 134-FZ: http://www.pravo.gov.ru - 30.06.2013.

Alternative variants of taxing deposits in foreign banks (some of which may be based on the incomes the taxes on which have not been paid) are of potential interest for the Russian tax authorities. According to the un-official statistics many Russian residents involved in tax offences have accounts in Swiss banks and enjoy bank secrecy granted by the banking system of that country.

In such situation the accession to a so called Rubik standard agreement would be an admissible solution from the domestic legislative perspective, if not the final one, then a palliative one for the near future. As a positive outcome of such a step we may mention additional revenues to the budget from taxing the accounts of Russian residents who refused to disclose the information. However, we are not aware of any negotiations between the two countries in this direction.

It is notable that in 2007 the Russian Federation announced a tax amnesty[32]. All the individuals who would join this program were guaranteed that the information on the so called declaration payment would not be sent anywhere (including the third countries) and, besides, it was guaranteed that it cannot be used as evidence in criminal or administrative procedure. However, not as many taxpayers as it was expected took advantage of this amnesty.

Nevertheless, at present there is a discussion of announcing in Russia another tax amnesty which will take into account the experience of the previous one and will be aimed, first of all, at recovery of taxes on incomes and capital which fled to tax havens jurisdictions, however, so far no concrete parameters or conditions of such amnesty have been announced.

9. Conclusions

It is necessary to point out that despite the numerous announcements of the Russian tax officials about the importance of exchange of tax information and despite the treaties concluded, in fact the exchange of tax information at the international level with the Russian participation still does not correspond to the scale of the national economy and the number of cross border transactions made. In this connection the alternative solutions of receiving information for tax purposes may be applicable in some cases. It is notable also that the existence of a considerable number of parallel channels and alternative centres of processing information relevant for taxation, and a considerable number of authorities involved in its collection is increasing the risk of its disclosure and violation of confidentiality.

[32] See: Federal law of 30 December 2006 № 269-FZ "On the simplified procedure of declaring income by individuals".