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'Offshore zones' for international companies in the Kaliningrad region and Primorsky krai

Federal Law No. 291-FZ dated 3 August 2018 (Law No. 291-FZ) provides for the establishment and operation of special administrative districts in the territories of the Russian Island (Primorsky Krai) and Oktyabrsky Island (Kaliningrad Region) to form an investment-attractive environment for Russian and foreign investors.

A number of other federal laws signed on 3 August 2018 provide for tax benefits and a special currency regime for international companies registered in the territory of the special administrative regions.

1. Participants of the Special Administrative Districts

In a special administrative district they establish a management company – a Russian legal entity entrusted to ensure the functioning of the respective district. In the territory of the Russian Island (Primorsky Krai) such a company is a management company defined by the Government of the Russian Federation for ensuring functioning of territories of the advancing social and economic development in the territory of the Far East Federal district, or its subsidiary.

A participant of the special administrative district can be a foreign legal entity, except for a credit institution, non-credit financial institutions, operators of payment systems and operators of payment infrastructure services, which:

- 1) entered into an agreement with the management company for the implementation of activities in the territory of the special administrative district (hereinafter – the 'agreement for implementation of activities') that establish types of activity of the participant of the special administrative district, conditions of implementation of such activities, rights, duties and liability of the parties;
- 2) is registered as an international company in the re-domiciliation procedure and entered by the management company into the register of participants of the special administrative district.

The foreign legal entity needs to file an application for entering into the agreement for implementation of activities with the management company, accompanied by documents confirming the applicant's compliance with the requirements for an international company, as well as other documents provided by the Federal law 'On International Companies' to obtain the status of an international company.[1]

The management company shall consider the application and within five business days from the date of the decision to enter into the agreement for implementation of activities send the draft agreement to the applicant.

The management company shall enter data on a participant of the special administrative district into the register of participants of the special administrative district within one day after the state registration of the respective international company in the respective special administrative district.

Thereat, the entity loses the status of a participant in the special administrative district, in case of termination of the agreement for implementation of activities.

The participants of the special administrative district may, in particular:

- get land plots and build infrastructure in the procedure provided by the land legislation and legislation on urban development;

- identify ancillary activities that are required to ensure operations of the participants of the special administrative district;
- engage persons to implement ancillary activities.

The agreement for implementation of activities may contain an arbitration clause on the transfer of disputes arising from such agreement to the arbitration tribunal administered by a permanent arbitration institution.

In order to enforce an arbitral award in such a case there is no need for the Arbitrazh court of the Kaliningrad region or the Arbitrazh court of Primorsky Krai to render a decision on the enforcement: if there is a respective direct agreement between the parties to the dispute, the respective Arbitrazh court shall adopt the ruling to issue a writ of execution for enforcement of the arbitral award within 14 days from the date of receipt of the application for the issue of the writ of execution without a court session.

Law No. 291-FZ, except for provisions on the powers of state authorities, bodies of the Social Security Fund of the Russian Federation in the territory of a special administrative district, entered into force on 3 August 2018.

2. Tax Benefits for International Holding Companies

Federal Law No. 294-FZ dated 3 August 2018 amended the Tax Code of the Russian Federation (Tax Code) in terms of the specifics of taxation of international holding companies.

An international holding company is an international company registered in accordance with the Federal Law 'On International Companies', which simultaneously meets the following conditions:

- 1) the international company is registered in the procedure of re-domiciliation of a foreign organisation, which was established in accordance with its personal law before 1 January 2018;
- 2) the international company within 15 days after the registration submitted to the tax authority at a place of registration the necessary documents and information (financial statements for the fiscal year preceding the registration date, an audit report to the financial statements that does not contain a negative opinion or refusal to express an opinion, information on the controlling persons of the international company);
- 3) as of the date of registration of the international company according to the procedure of re-domiciliation of a foreign organisation, its controlling persons became the controlling persons of such a foreign organisation before 1 January 2017.[2]

The controlling person of an international company, as well as a foreign organisation by way of re-domiciliation of which such an international company has been registered, is an individual or legal entity, whose share in this international company (for individuals - in conjunction with spouses and underage children) is more than 15%.

The changes made to Chapter 25 of the Tax Code that become effective from 1 January 2019 establish benefits on corporate profits tax for international holding companies.

The income of an international holding company in the form of profits of controlled foreign companies, for which such an international holding company is recognised as the controlling person, for tax periods ending before 1 January 2029, shall not be included into the tax base of the international holding company.

Specific features of the formation of value of property (property rights) by international companies and foreign organisations recognised as tax residents of Russia are established.

The following rates for corporate profit tax are established:

- 0% - for income received by an international holding company in the form of dividends provided that as of the date of the decision to pay dividends the international holding company continuously owns for at least 365 calendar days not less than 15% (stakes) in the charter (reserve) capital (fund) of the organisation that pays dividends, or depositary receipts entitling to receive dividends in the amount not less than 15% of the total amount of dividends paid by the organisation[3];
- 5% - for income received by foreign entities in the form of dividends on shares (interests) of international holding companies that are public companies as of the date of payment of dividends, before 1 January 2029.

When international holding companies simultaneously meet the following conditions, a tax rate of 0% shall apply to the tax base determined by income from sales or other disposal (including repayment) of interests in the charter capital of Russian and(or) foreign organisations, and shares of Russian and(or) foreign organisations:

- 1) shares (interests in the charter capital) of a Russian or foreign organisation[4] as of the date of their sale or other disposal (including repayment) are continuously owned by an international holding company under the right of ownership or other proprietary rights for at least 365 calendar days and constitute not less than 15% contribution (interest) in the charter (share) capital (fund) of such organisation;
- 2) shares (interests) constitute the charter capital of organisations no more than 50% of assets of which as of the last reporting date preceding the date of sale or other disposal (including repayment), directly or indirectly consist of immovable property located on the territory of the Russian Federation;
- 3) shares (interests in the charter capital) of a Russian or foreign organisation were not contributed (transferred) into the charter capital of an international holding company and were not acquired by such a company as a result of reorganisation within 365 calendar days before or after the date of registration of such a company as an international company.

The first tax (accounting) period for international companies recognised as tax residents of the Russian Federation starts from the date of registration of the foreign organisation as an international company.

3. Currency Regime for International Companies

Federal Law No. 293-FZ dated 3 August 2018 amended the Federal Law 'On Currency Regulation and Currency Control', which now provides for a special currency regime for international companies - foreign legal entities registered as a re-domicile in special administrative regions in the Kaliningrad Region and Primorsky Krai.

Foreign legal entities registered in accordance with the Federal Law 'On International Companies' are deemed non-residents for the purposes of currency regulation and currency control. This means that settlements in foreign currencies and other currency transactions between international companies and residents can be carried out without restrictions (except for the sale and purchase of foreign currency and checks with face value indicated in foreign currency, which may be effected in Russia only with authorised banks and state corporation 'Bank for Development and Foreign Economic Affairs (Vnesheconombank)').

It has been also clarified that non-residents may make between each other in the territory of Russia the transfers of foreign currency and the currency of the Russian Federation without restrictions and without opening bank accounts, settlements in cash foreign currency or the currency of the Russian Federation subject to the maximum amount of cash payments provided for by Russian legislation, as well as transfer and receive foreign currency and the currency of the Russian Federation from and in the territory of Russian without opening bank accounts.

[1] Details on obtaining the status of an international company can be found at:<https://gratanet.com/en/publications/details/18815-alert-russia-international-companies>.

[2] This condition does not apply to:

- international companies, which are public companies as of 1 January 2018;
- international companies, which aggregate share of direct and (or) indirect participation of an international company specified in para 1 hereof is 100 percent.

[3] If the organisation that pays dividends is a foreign entity, the tax rate established by this clause shall apply to organisations, whose state of permanent location is not included in the list of states and territories approved by the Ministry of Finance of the Russian Federation.

[4] This rate shall apply if the state of permanent location of such foreign organisations is not included into the list of states and territories approved by the Ministry of Finance of the Russian Federation.

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Contacts:

Yana Dianova

Director of the Corporate and Commercial Law Department, GRATA International (Moscow)

Tel: +7 (495) 660 11 84

E-mail: ydianova@gratanet.com

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Key contacts



Yana Dianova

Counsel

 Moscow, Russia

 +7 495 660 1184

 +7 906 734 6817

 ydianova@gratanet.com

