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News

Ukraine's terms of accession to the World Trade Organization are formally approved by WTO members. Ukrainian President Victor Yushchenko promises quick ratification of the agreement by the country's parliament. Yushchenko also pledges to take a constructive stance regarding Russia's efforts to secure WTO membership, but warns that Russia must address barriers to trade with Ukraine in any negotiations on Russian accession to the WTO. (Page 4)

Shares in Hungarian state-owned companies would be sold at a discount to residents, under the "New Ownership Program" announced unexpectedly by Prime Minister Ferenc Gyurcsány. The plan is expected to include the listing of minority interests in selected strategic companies on the Budapest Stock Exchange, where institutional investors also could acquire shares. (Page 7)

Russian securitisations receive a boost from the Supreme Arbitration Court's clarification of certain matters concerning the assignment of receivables, which is expected to reduce some of the legal risks surrounding securitisations. (Page 10)

Kazakh President Nazarbayev orders that a new tax code be drafted this year. Prime Minister Masimov suspends negotiations on new energy contracts with foreign investors until the new tax code is approved. (Page 17)

The Slovak Republic's Income Taxes Act is amended, accompanied by related modifications to the Accounting Act. (Page 12)

Russia's Gazprom, France's Total, and Norway's StatoilHydro sign a deal to jointly develop the first phase of Russia's giant Arctic Shtokman gas field. (Page 23)

The Estonian government proposes important changes to the Income Tax Act to take effect in 2009 that would significantly affect tax planning. (Page 14)

Kosovo declares its independence from Serbia, provoking mixed reactions from the international community. (Page 17)

Hungary's OTP Bank agrees to sell its insurance subsidiary, OTP Garancia, to France's Groupama for some U.S.\$917 million. (Page 24)

Feature Report

Tax planning in the new E.U. countries, with a particular emphasis on recent trends and developments, is examined by Bartjan Zoetmulder and Wouter Vosse, of Loyens & Loeff, Amsterdam. (Page 19)

Special Report

The Russia-Switzerland double tax treaty, in particular, its practical application in transnational business, is analyzed by Vladimir Z. Gugkaev, Secretary General of the Joint Chambers of Commerce Switzerland-Russia, French-speaking part; Glenn S. Kolleeny and Tatiana E. Gouk, of the Salans law firm, St. Petersburg; and Dmitry A. Pentsov, of the Fropiep Renggli law firm, Geneva. (Page 25)

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the purposes of this letter as “the value of goods (work and services) sold, increased by the amount of VAT which is payable by the tax agent to the Russian budget.” For over a decade, the ministry has taken the view that the tax base was the value of goods inclusive of VAT. Given that the provisions of Article 161 have not changed since its enactment in 2001, such a modification of the ministry’s views is really surprising!

Finally, the ministry concludes that the tax agent can offset VAT calculated in addition to the foreign company’s remuneration, provided that the tax agent has remitted such VAT to the budget in due course and has recorded the acquired goods (work and services) in its books. In a number of previous clarifications, the ministry denied the Russian customer’s right to offset VAT paid by the customer using its own funds, based on the fact that VAT had not been withheld as required by the Tax Code.

On October 31, 2007, the Federal Tax Service forwarded the ministry’s letter to the subordinate tax authorities (Letter No. ShT-6-03/844@ of the Federal Tax Service of October 31, 2007). One might therefore expect that, in future, local tax authorities would not challenge the offset of self-assessed VAT (or VAT paid from the tax agent’s own resources). However, from a practical standpoint, it is difficult to believe that the local tax authorities would actively apply such revolutionary guidance, especially given that the letter was distributed for information purposes rather than for “information and guidance” or “for information and action.”

RUSSIA

Securities

Securitisations Facilitated By Court Clarifications Regarding Receivables

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At the end of 2007, the Supreme Arbitration Court of the Russian Federation (the “Supreme Court”) published Informational Letter No. 120, An Overview of the Practice of Application by Arbitration Courts of Chapter 24 of the Russian Civil Code, dated October 30, 2007 (the “Informational Letter”). Chapter 24 of the Russian Civil Code (Change of Parties to an Obligation) regulates, *inter alia*, assignments of receivables (rights).

The Informational Letter summarizes current court practice on various legal issues relating to the assignment of receivables, as well as the position of the Russian Supreme Arbitration Court on such issues. Although the letter is not binding, as a matter of practice, Russian courts generally follow the positions expressed by the Supreme Court in such letters.

Russian court practice on the assignment of receivables has been quite diverse, inconsistent and negative in a number of areas. In particular, in the past, Russian courts have invalidated sale (assignment) agreements on the basis that, *inter alia*, they purported to transfer bank loans to non-banking institutions, future receivables, rights in part rather than in

full, and rights only without the transfer of the underlying obligations.

The Informational Letter should therefore be helpful in reducing some of the legal risks currently existing with Russian securitisations.

In particular, the Supreme Court clarified the following:

Assignment Of A Bank Loan To A Non-Banking Entity Is Allowed

The Supreme Court ultimately confirmed the approach developed by scholars and the lower courts whereby the assignment of receivables by a bank under a bank loan agreement to a non-banking entity that does not have a banking license does not contradict any provisions of Russian law. The Supreme Court ruled that an assignment of rights under a bank loan agreement is not a banking operation, and that a license is required only for the purposes of granting a loan but not to receive the repayment of such loan.

This clarification would certainly be helpful for securitisations of different bank assets, including mortgage loans, consumer receivables, auto loans and credit cards involving the sale of receivables to an offshore special purpose vehicle without a banking license.

Assignment Of Future Receivables Is Allowed

The Supreme Court ruled that an agreement on the assignment of a future receivable (*i.e.*, a receivable that does not exist at the time of entering into an assignment agreement), which would pass to the assignee once it was generated by the assignor, does not contradict any provision of Russian law.

Arguments were raised by the Supreme Court that the current legislation does not contain any prohibition of the turnover of future receivables (rights), while the Russian Civil Code expressly allows a sale of assets that may be acquired by the seller in the future (Article 455) and a pledge of future receivables (Article 340). Further, provisions of the Russian Civil Code on sale and purchase agreements (including Article 455) would generally apply to the assignment of receivables (rights). We also note that the transfer of future receivables is also expressly recognized in the context of a factoring transaction (Article 826).

This clarification would certainly be helpful for securitisation of credit card receivables, trade receivables, revolving assets and future flow transactions.

Assigned Receivables Should Be Properly Identified

The Supreme Court confirmed the general approach where one of the main conditions for a valid assignment is proper identification of the assigned receivables (rights). There is, however, no specific provision in Russian law clarifying what constitutes such proper identification. Generally, identification of receivables in a sale (assignment) agreement is carried out by reference to the debtor and the creditor of the assigned claim, grounds for such claim (*e.g.*, reference to contract), amount and substance of such claim.

