The offshore companies in construction: theory and practice

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Abstract. This article is devoted to use of offshore structures (companies) in construction business. Theoretical aspects of this problem are affected, in particular questions of legal forms of the offshore companies which are actively used also by construction companies. The parallel between use of the offshore in construction business of Russia and Singapore is drawn, meaning a construction boom in both countries. Requirements to the Singapore offshore company conducting different types of construction including high-rise construction are in detail considered.

1 Introduction

According to the report "From Soviets to oligarchs: inequality and property in Russia, 1905 – 2016" National bureau of economic researches of the USA, the volume of the offshore capital of the Russian citizens exceeds currency reserves of the state three times, and the volume of the assets removed in offshores is 75% of national income of the country. "That is abroad — in Great Britain, Switzerland, Cyprus and other similar offshore centers — contains as much finance of rich Russians how many all population of Russia holds in the country" — authors of the report, Filip Novokmet and Tomas Piketty from the Parisian school of economy and Gabrielle Zuckman from faculty of economy of the University of California emphasize. Thus, if, according to data of Rosstat the national income of the country in 2015 equaled 81 trillion rubles, then is stored more than 60 trillion rubles of money of the Russian origin in offshores [1].

According to authors of the report, Russia became one of the most drama examples in the world concerning flight of the capitals in offshores. These figures demonstrate the indefatigable importance of offshore subject for economy of Russia once again. Not least use offshore opportunities and the companies of the construction sector.

2 Materials and methods

Consideration of the nature of the offshore company in a separation from its status in relation to the offshore center does not make, in general, any sense at all: on the legal form the offshore companies essentially differ in nothing from the companies usual, using the same experience acquired in the international business practice. Certainly, there are some

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specifics of legal forms of the offshore companies, however, first, it not so is essential from the point of view of development of a definition and search of distinctive signs, and secondly, from the point of view of the principles of management and corporate law these specifics keep within a framework of widely known and common forms of the organization of firms. The specifics of activity of the company - trade and intermediary, license, production, investment, insurance and so forth - will also not add anything for explanation of an essence of the offshore company as usual, not offshore firms are engaged in all same kinds of activity. In other words, in the majority of parameters the offshore company differs in nothing from any other resident company in any country of the world. However in practice existence of the offshore company and its opportunity very significantly differ from opportunities of the usual company, and all essence of this distinction consists in the status of the company, in its relation with this or that offshore center.

Proceeding from all aforesaid follows that the offshore company is the company of any legal form registered in the register of the state or territory, announced the offshore status and conducting the activity (taking income) outside this offshore center. Thus, from such definition it is obvious that company per se turns in offshore (regardless of time of this "transformation" - at the time of establishment, registration or later) owing to the special relations with the offshore center that gives it the special status [2, p. 104].

The status of the offshore companies, as a rule, is defined by the special act adopted in the offshore center. Similar acts contain a number of requirements to the companies which can differ somewhat from each other depending on a place of registration. But the main of them are as follows:

- founders (owners) of this company have to be nonresidents of this state;
- the offshore company should not perform any business operations in the territory of this offshore center and also cannot have property and income sources here;
- management of the offshore company - meetings of the Board of Directors, holding a meeting of shareholders, signing of the contracts and so forth - has to be carried out from abroad.

There are also derogations from these requirements as that - permission to have constant office in the country of registration, to do business in the territory of the offshore center (the truth, in this case income gained from activity in the territory of the country of registration, most likely, will fall under the local taxation), etc. The main feature and advantage of the offshore company is her tax-exempt status - full or partial tax exemption in a place of registration. Today the following types are mainly used in offshore business: the international business company, the exempted company, the qualified company, or the company with the special status, the non-resident company.

All offshore centers irrespective of their belonging to this or that classification group represent a wide range of privileges to the companies registered in them. It is one of the key moments in understanding, both the offshore centers, and offshore business in general. All companies registered in the offshore center depending on the status of registration are subdivided into those to which tax benefits are provided, and those which pay taxes in full. In the majority of the offshore centers the range of the provided privileges is very wide, as well as types of the offered statuses of the offshore companies are various.

The nature of the offshore company is represented very ambiguous, to be exact dual. And this duality results from the fact that formally for creation of offshore firms the same legal forms are used, as in usual business, but, on the other hand, even insignificant differences in these forms at their skillful use result in various results. Various features of functioning of the same type of the company in the different offshore centers and other countries create additional opportunities for businessmen at tax planning of the activity.

In other words, in modern offshore business all wide range of legal forms is applied. These forms differ in the certain countries a little that is defined by differences in two legal
systems dominating in the world - Anglo-Saxon (or the system of the Common law) and French-German (or continental): the system of judicial precedents while domination of the codified norms is characteristic of the continental right remains a basis of the Common law, as we know, still (increase in their specific weight is observed all more and in the states adhering to Anglo-Saxon legal system recently). In the Anglo-Saxon law there are also very specific legal institutes which full analog in other system is absent (a typical example - institute of a trust). Nevertheless, one may say, that, despite the available distinctions, the main organizational and legal types of the enterprises in the island and continental system of the right in many respects coincide.

It was told about the generalized types of the companies above, however from the point of view of offshore business their specific forms are of bigger interest. These are, as a rule, the same (on the legal form) the companies, but possessing the special tax status. Here it is necessary to call, first of all, these types of the companies which are mainly used in offshore business today: international business company; the exempted company; the qualified company, or the company with the special status; non-resident company.

The purpose of creation and use of the offshore company in various financial schemes is extremely simple - to bring out of taxes, draconian according to businessmen, as it is possible the most part of profit, or in other words – to localize a profit maximum on the least taxable subject which the offshore company is urged to become. The main functions of the offshore companies are very numerous and various here, they (the offshore companies) can act in the most various quality. Use offshore is one of the most widespread options its involvement at registration of the building site – in particular, such scheme in Russia was and remains very demanded.

3 Results

The offshore company in construction business has the specifics. In this case the offshore company can be used only if between a country of incorporation and the country of conducting real business (construction in this option) the agreement on avoidance of double taxation is concluded. If there is no such agreement, then the foreign real estate development company will pay taxes at the usual rate – same as well as domestic as the building site is equated to permanent mission of the foreign company. If the agreement is available, then, most likely, the building site acquires the status of the permanent representative not at once, and after time defined in the contract, as a rule, ten months and more. During this period of time the company will be able not to pay taxes in the country of business, and only in a country of incorporation, respectively, by preferential (offshore) rules, or if taxes in the country of business nevertheless are paid, then the company has the right to receive later return, being guided by provisions of the contract on avoidance of double taxation.

The contract with the customer has to be made so that work was broken into stages, each of which is shorter than the term specified in the contract on avoidance of double taxation (for example, the same ten months). After end of each stage the act of an acceptance is signed, and the following stage is carried out already by other offshore company from the same state, as the first. It is, actually, the essence, "cunning" of use of offshore schemes in construction.

Construction branch of Russia – one of the most dynamically developing branches of our economy. In the performance at a meeting of the State Council concerning development of a construction complex and improvement of town-planning activity in December, 2016 the President of Russia Vladimir Putin noted that "...construction branch – the most important, strategic direction of social and economic development of the country. It is one of the most dynamic, perspective segments of the market of which nearly 6 percent of GDP
of the country are the share. The branch has all opportunities to become one of key drivers of growth of the Russian economy, and it is fully for this purpose important to realize its huge enormous potential" [3]. The branch activity in Moscow and the Moscow region and also St. Petersburg and other Russian million-populated cities and the city agglomerations adjoining to them is especially noticeable. The noticeable place in this activity belongs to high-rise construction. At the same time, in dynamic development of this branch there are also certain difficulties, obstacles which overcoming, in particular, is expressed also in use of offshore schemes.

It is no secret that for construction of this or that object besides knowledge, abilities, skills and any resources any respect for formalities – legal is vital, bureaucratic and so forth – which are established in this or that country. The tax matters in this row take not the last place. In total these two problems – complexity and opacity of the tax legislation and in a bigger degree complexity and ambiguity of the Russian bureaucratic practice connected with any document flow (permissions, references and so forth) – promote that construction business seeks to use offshore schemes in the activity.

However in this aspiration it is not original at all. Adhere to the same logic also construction business around the world. One of the most striking examples – construction business of Singapore which on intensity is quite comparable with a construction complex of the Moscow agglomeration. By the way, the Singapore offshore – and the independent city-state for a long time is the offshore center at what one of the most dynamically developing in the Pacific area – today it is very actively used by the Russian construction business for the purposes. It is promoted concluded on September 9, 2002 (works in edition of November 17, 2015) by the Agreement between the Government of the Russian Federation and the Government of the Republic of Singapore "About avoidance of double taxation and prevention of evasion from the taxation concerning taxes on income".

The Singapore construction complex – one of the most important elements of economic system of the island city-state, if not key. And high-rise construction takes key positions in it, considering scarce land resources of Singapore. The construction boom accompanies the Singapore economy from the moment of finding by the country of independence in 1965 (certainly, with the cyclic decreases of the activity characteristic both for branch, and for the economic systems of higher order – national and world economies) at what from the very beginning Singapore grows up, there enormous development was gained by practice of high-rise construction. Today in Singapore there is a great demand for a profession of the builder, real estate development companies and in general the experts anyway connected with a construction complex. The main factor of this demand is a state order: government projects act as the constant locomotive of branch, and the objects chosen as peculiar "points of growth" the same that we see in Moscow today – the subway, housing construction, investments in city infrastructure and so forth [4].

Even, despite the economic crisis which began in 2008 and wavy coming back to world economy for all decade the construction sector of Singapore showed all last years stable growth on average at the level of 16% a year [4, p. 349]. There is no wonder, as not only internal factors, but also external contribute to the development of the construction sector: the construction sector of Singapore attracts the capital (players) from around the world, and the most different segments of construction business are demanded. Offshore real estate development companies are registered in Singapore very often – they are among leaders in quantity of the registered foreign objects.

The real estate development company registered in Singapore including conducting high-rise construction (and such there – the vast majority), has to issue several types of licenses according to the legislation of the republic. Treat them: license for rendering professional engineering services; permission to occupation of the section of the road; license for occupation and use of rooms; license for conducting of telecommunications;
license for advertising; general license on radio of communication; license for local private network; the license for the localized radio communication; license for private network of a wide range; license for television; the license for disposal of objects of construction waste through a drain.

Certainly, the main is the license of the first type. The companies which are carrying out the following types of works have to receive it: hinged facades and plaster, glazing, joiner's works and woodworks, construction of buildings from scratch and works on modernization, repair and renovation of buildings, electricity conducting, installation of elevators and escalators, installation of awnings and shutters, installation of automatic systems on remote monitoring of buildings, installation of fire-prevention and security alarm systems, installation of heaters, conditioners and various sanitary equipment, the mixed construction activity, construction of bridges, tunnels, viaducts and overpasses, construction of communication lines and power transmission, construction of dams and drainage constructions, construction of harbors, piers, docks, thieves, construction of roads, construction of ways of water supply, the gas pipeline and sewerage, construction of children's playgrounds, delivery of the construction equipment for rent, works on preparation of building sites (excavation and works on transfer of the soil, melioration, re-planning of a landscape, research, treatment and stabilization of the soil, wrecking and works on demolition of buildings), structural repair work [5].

The foreign company in Singapore cannot obtain such license. It has to be obligatory registered in Singapore, and for this purpose it is quite enough have the offshore status. The subsidiary or branch of large construction holding will be suitable for these purposes. At registration the offshore real estate development company has to provide the memorandum in which it would be specified that its main objective – to render professional engineering services. The minimum paid capital of the company has to make 500 thousand Singapore dollars. In the corporate charter it has to be specified that most of directors of the company are the registered construction engineers or certified specialists in the field of construction. The company has to be insured from the risks connected with conducting construction activity [6, 7].

Obtaining such license in the Singapore Professional Engineers Board of Singapore is possible in the shortest possible time when granting a set of necessary documents. Treat those: certified copy of the memorandum, list of full members and directors, certified copy of the insurance certificate, certified copy of the certificate on registration of the company, decision on appointment of the director of the company, information on the board of directors, its chairman and on shareholders, certified copy of the annual report of the company. The license is granted for a period of one year, costs about three hundred Singapore dollars, the application for its extension has to be submitted the registrar not later than two months before expiration [8].

4 Discussions

The construction boom accompanies the Singapore economy from the moment of finding by the country of independence in 1965 at what from the very beginning Singapore grows up, there enormous development was gained by practice of high-rise construction. The main factor of this demand is a state order: government projects act as the constant locomotive of branch, and the objects chosen as peculiar "points of growth" the same that we see in Moscow today – the subway, housing construction, investments in city infrastructure and so forth. Despite the economic crisis which began in 2008 and wavy coming back to world economy for all decade the construction sector of Singapore showed all last years stable growth.
5 Conclusion

Russia became one of the most drama examples in the world concerning flight of the capitals in offshores. The statistics demonstrates the indefatigable importance of offshore subject for economy of Russia. Not least use offshore opportunities and the companies of the construction sector. The offshore company is the company of any legal form registered in the register of the state or territory, announced the offshore status and conducting the activity (taking income) outside this offshore center. The offshore company in construction business has the specifics. In this case the offshore company can be used only if between a country of incorporation and the country of conducting real business (construction in this option) the agreement on avoidance of double taxation is concluded. Construction branch of Russia – one of the most dynamically developing branches of our economy. The Singapore construction complex – one of the most important elements of economic system of the island city-state, if not key. Especially high-rise construction takes key positions in it, considering scarce land resources of Singapore.

References

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