

LAW SEMINAR 2019: GERMAN CHAMBER OF
COMMERCE AND INDUSTRY (AHK) BELARUS

PRESIDENTIAL EDICT NO.488 AND THE NEW PROVISIONS OF THE BELARUSIAN TAX CODE

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TODAY

CORE TOPICS

- contrary to what was announced, nobody cancelled the Presidential Edict No. 488 (dated 23.10.2012 “On some measures on prevention of the illegal minimization of the sums of tax obligations”)
- the Article 33 of the Tax Code becomes even more interesting
- if you misrepresent your business transactions, there will be trouble
- we will no longer pay extra taxes for those who fell in the Register of entities with increased risk of economic offenses
- to avoid tax minimization, the Belarusian Fiscal Ministry will now be able to check the business goals of your commercial transactions
- the transitional period, according to our estimations, will last about three years: we give you unharmed advices to get through it
- we shall expect soon an automatic exchange of tax information with 70 countries and the BEPS plan (OECD’s action on Base Erosion and Profit Shifting)



PART 4, ARTICLE 33 OF THE NEW TAX CODE

THE TAX BASE AND THE AMOUNT OF THE TAX TO BE PAID
(REFUNDED) ARE SUBJECT TO CORRECTION ACCORDING TO THE
VERIFICATION RESULTS

*(from the Edict No.
488)*

Establishing a
misrepresentation of the facts
of a business transaction or
objects of taxation

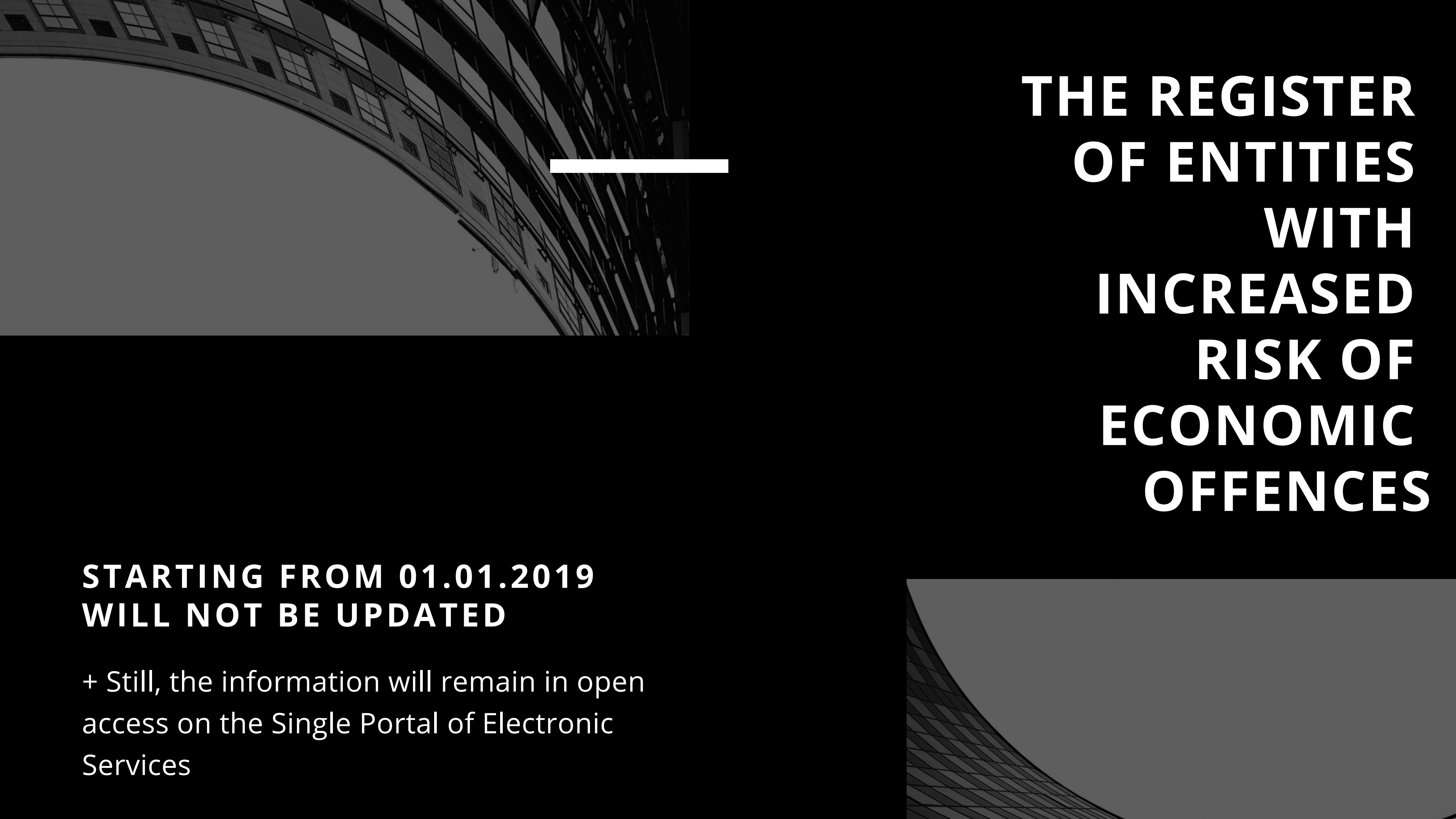
In cases the main purpose of a
business transaction is the
non-payment (incomplete
payment) or refund of the tax
amount

*(from Edict No.
488)*

Absence of effective business
transaction

IF SUCH
CONDITIONS
ARE
ESTABLISHED

- factual data about the objects of taxation
- the actual circumstances of business transactions' execution
- the data available about the execution of business transactions, in case this data is ever possible to establish



THE REGISTER OF ENTITIES WITH INCREASED RISK OF ECONOMIC OFFENCES

**STARTING FROM 01.01.2019
WILL NOT BE UPDATED**

+ Still, the information will remain in open
access on the Single Portal of Electronic
Services



GETTING TO KNOW

The main purpose of a business
transaction

PART 3, ARTICLE 33 OF THE NEW TAX CODE



EXAMPLE # 1

THE COMPANY IS SPLIT UP INTO A GROUP OF COMPANIES TO BENEFIT FROM THE SIMPLIFIED TAXATION SYSTEM

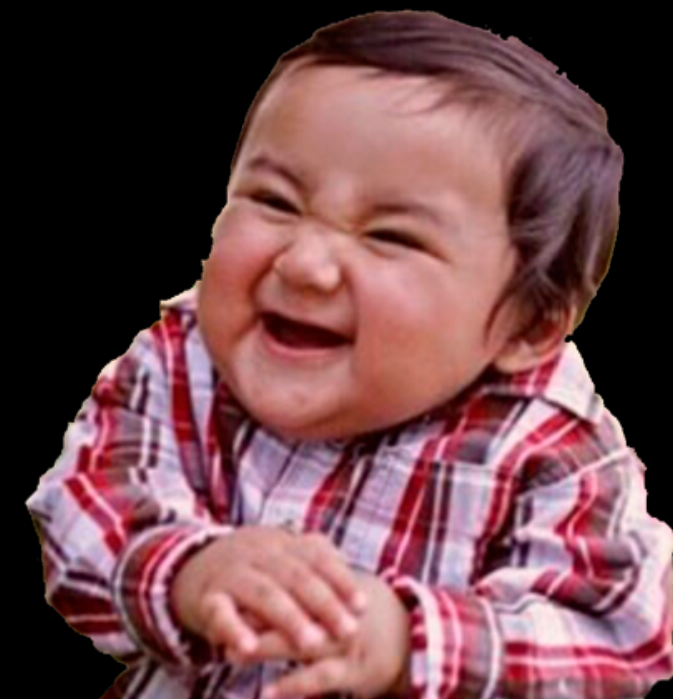
The owner of a company with a Simplified Taxation System (STS) realises that it becomes close to the limits of applicability to STS in terms of revenue, and decides to “break up” his business, in view of creating another identical company applicable to STS, and transfers to this new company some part of existing contracts.



EXAMPLE # 2

FOREIGN MOTHER COMPANY ISSUES LOANS TO ITS OWN SUBSIDIARY

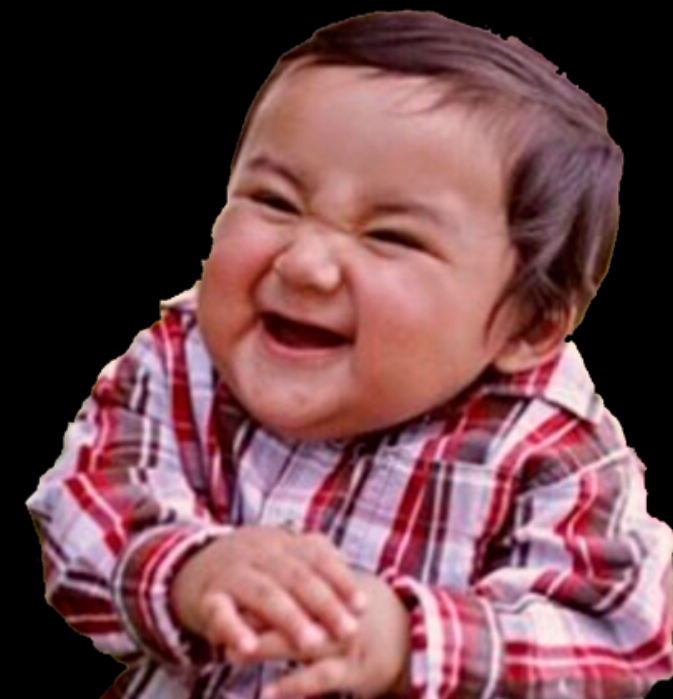
The loans are not reimbursed, the interests are not paid, the payment dates are extended, the collection of such loans is not enforced by legal action.



EXAMPLE # 3

NON-MONETARY CONTRIBUTION TO THE EQUITY FUND

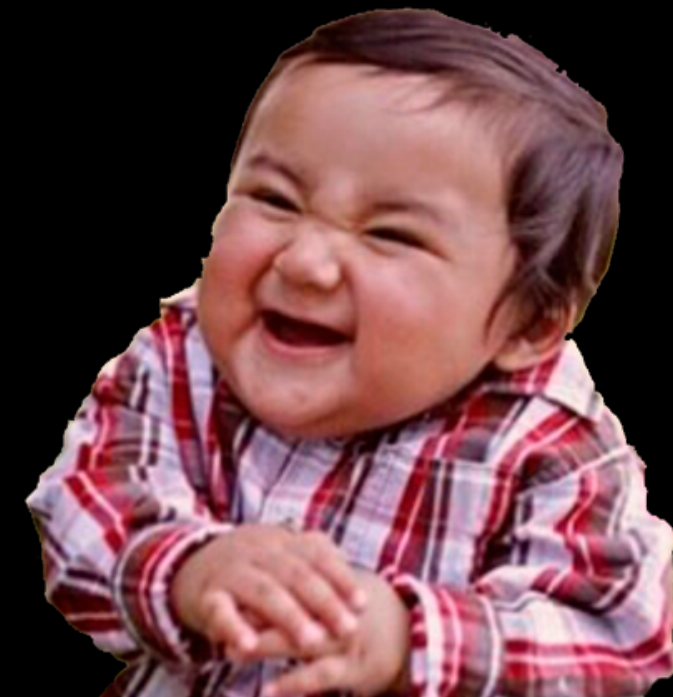
Subsequently, this non-monetary contribution is reallocated within the company's reorganization, or as part of a share. Thus, it is not necessary pay the VAT, unlike in case of a direct sale.



EXAMPLE # 4

INTERMEDIARY STRUCTURES

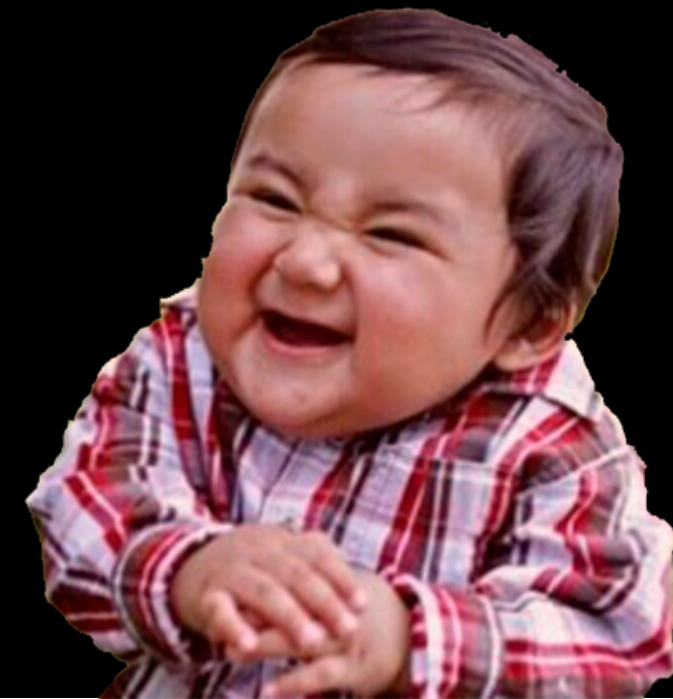
- Why don't we order a market research?
- Or maybe we should analyse our own customer base, for starters?
- Though no, we could just trust what the beneficiary says.



EXAMPLE # 5

INDIVIDUAL ENTREPRENEUR INSTEAD OF DIRECTOR

If there is no identified business purpose, there is a risk that the contract concluded with the manager (contract of management with an individual entrepreneur) would be requalified into a labor contract, in which case the company would be penalized for not withholding the Social Security Fund contributions.



TO SEIZE THE UNSEIZABLE

Business transactions are not limited to deals only.

The inspections can apply to transactions back in time up to 5 years. But we should rather expect a 3 years' time limitation. Outside of this period, it is not "appealing" to run an inspection.

Evaluate the business goal for each transaction (whether in Belarus or outside the country).

Do you fulfill the requirements of substance?

Check the jurisdictions of your companies. They may be blacklisted.

Mind the price abuse within a group of companies (transfer pricing).

MEANWHILE

WE HAVE NO COURT PRACTICE

We can take as an orientation point the Russian doctrine of unjustified tax benefit, which exists since 2006. In 2017, it was formalized in the Article 54.1 of the Russian Tax Code, and it has furthermore received clarification in a number of letters to the Federal Tax Service of the Russian Federation which have specified the consistent elements of deals aiming at tax evasion, as well as means of their identification and proving.

GOOD NEWS

BELARUS HAS NOT YET JOINED THE
OECD'S BEPS PLAN (BASE EROSION AND
PROFIT SHIFTING)

but partially the plan is already functioning



STAYING IN TOUCH



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