

## Russian De-offshorisation Legislation — how the new law on taxation of Controlled Foreign Companies affects you and your clients

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The new law on the taxation of controlled foreign companies (the 'CFC') and other anti-offshore measures (the 'Law') has received Presidential Assent on Monday this week (24 November 2014) and will come into force starting from 1 January 2015.

What are the main changes?

- The main purpose of the Law is to set the framework and instruments for the Russian government to clamp down on tax avoidance by Russian taxpayers using international structures.
- The changes will impact all international corporate groups and wealth planning structures that are controlled or established by Russian resident individuals or companies.
- The Law requires Russian tax resident individuals and companies to disclose ownership of foreign companies and wealth planning vehicles.
- It also imposes tax on them, regardless of whether the profits were distributed to the beneficial owners or not.
- Disclosure obligations apply to all Russian tax resident persons holding a share of over 10% in any foreign organisations and structures (for example, wealth planning vehicles); and on participation in CFCs. Special reporting rules are set out for foreign organisations holding Russian real estate directly or indirectly.
- Foreign organisations and non-corporate structures are deemed CFCs if they are controlled by Russian resident persons (individuals or companies). By default, a controlling person is defined as a person who directly or indirectly participates in over 25% (50% from 2015) of the share capital of foreign organizations or structures, however 10% participation share will be enough to deem a person as controlling person, if over 50% of the foreign organization or structure is owned by any other Russian resident persons. The calculation of participation shares will take into account aggregated share percentages, with spouses and minor children included for the purposes of these rules. If default control does not apply, a person can still be deemed as controlling person on basis of actual control criteria.
- Controlling persons will be subject to Russian tax on profits of CFCs.
- There is a number of exemptions from the taxation for certain categories of CFCs. The list of exemptions also includes foreign organisations registered in treaty countries which also meet the effective tax rate test (75% of the average weighted tax rate (calculated on the basis of the formula)). Importantly, exemptions also apply to the taxation of CFCs' profits, but would not exclude reporting on CFCs for controlling persons.
- Exemptions apply to the profits of all CFCs up to 10 million RUB from 1 January 2017 (50 million RUB in 2015 and 30 million RUB from 2016).
- The Law provides for separate sets of rules on the non-territorial taxation of the disposal of Russian-based immovable property, and on the taxation of foreign companies managed and controlled from Russia, as well as a range of other provisions.

What does this mean for you?

- If you are a **Russian tax resident individual or company**, you need to review your international corporate and wealth planning structures and prepare to disclose ownership of in foreign organisations and structures, as well as to report and pay tax on profits of CFCs.
- If you are a **non-Russian resident**, the Law does not apply to you. Nevertheless, we would propose that you review your residency status to ensure that you do not acquire Russian tax resident status starting 1 January 2015. Also, if you have Russian-based assets or you are participating in joint ventures with Russian based partners, the Law is likely to have an effect on the tax efficiency of your structure.
- If you are an **international bank** working with Russian resident clients, you need to review the structures used by your clients for personal and corporate use.

- If you are a **trustee** of a foreign trust (or a foundation) with Russian resident settlors, beneficiaries or controlling persons or **a director** of a foreign company holding Russian assets or controlled by Russian persons, you need to review your wealth planning and corporate structure to ensure that you are able to support and administer compliance with the Law.

Why is it important to comply with the Law?

- For **Russian tax residents** – individuals or companies – compliance is paramount to make sure that you do not incur Russian tax or criminal liability.
- For intermediaries, such as **banks, trust companies and corporate providers**, familiarize yourself with the rules will help you support your clients and comply with any requirements the Law imposes on you to avoid any potential liability for non-compliance.

What are the important deadlines for you?

- By **1 April 2015** – notification on participations over 10% in any existing foreign organization and structures set up prior to 1 January 2015
- By **20 March 2016** – first reporting date on CFCs
- **31 December 2017** – the end of the period for which administrative and criminal liability will be waived for late payment of tax

Where can we help?

- We can help you to understand the new Law and what it means for you and your clients.
- We can review your **trust and foundation structures** and advise you on what needs to be done to comply with the Law or minimize the exposure.
- We can review your **corporate structures** (holding, financing and trading) and propose changes to the structures to ensure compliance with the Law.
- We can recommend appropriate guidelines for your group of companies so that they are **managed and controlled** in tax efficient manner.
- We can **relocate you to the UK** (and a number of other jurisdictions) and provide pre-immigration tax planning advice.
- If you have international footprint, we can help you to compare your tax liabilities in various jurisdictions and advise on the **best tax position** going forward.

If you would like to know more

Please involve us to advise you and your clients on the new CFC legislation. Please contact Olga Boltenko at [olga.boltenko@withersworldwide.com](mailto:olga.boltenko@withersworldwide.com) your relationship partner at Withers.

We will also be covering this topic at the Russian Wealth Advisors Forum, taking place on 4 – 5 February 2015 at the Dolder Grand Hotel in Zurich, Switzerland. You can still save 150 CHF by registering before 19 December. For more info, please [click here](#).

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