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Russian nationals working abroad: Issues to consider**

Overview

As some of you may know, the list of obligations required for Russian nationals going on assignment abroad has recently been expanded.

Along with personal income tax implications, Russian citizens planning to work abroad should take notice of currency control restrictions, migration requirements, issues related to their participation in the Russian pension system arising as a result of their departure from Russia, and issues related to the automatic exchange of information, as well as the liabilities incurred for violating rules related to these obligations.

We would like to provide a more detailed analysis of each sphere of obligation:

Currency control restrictions

Russian citizens who are considered to be residents, per the current currency control legislation, are subject to currency control restrictions.

For currency control purposes, a “resident of the Russian Federation” (hereinafter referred to as “currency control resident”) is defined to include not only a citizen of Russia, but also a foreign citizen or stateless individual who lives

permanently in Russia and has a residence permit (a foreign citizen or stateless individual becomes a resident of Russia when he or she obtains a residence permit).

Russian residency status for currency control purposes is lost when a Russian citizen: (1) resides outside the Russian Federation for a period of one year or more and acquires a residence permit issued by the relevant state authorities of the foreign country concerned; or (2) temporarily resides outside the Russian Federation for a period of one year or more on the basis of a working visa or a student visa issued for a period of not less than one year or on the basis of a number of such visas in which the aggregate term of issuance is one year or more.

As per the letter of the law, if a Russian citizen living abroad returns to Russia for even a single day, that individual would regain his or her status as a Russian currency control resident and would therefore become subject to the currency control rules.

However, the Ministry of Finance suggests loosening control over transactions in foreign bank accounts. According to this position, Russian citizen living abroad for one year or more who spend less than three months in the Russian Federation in a calendar year will not be considered Russian currency residents.

Below are the main currency control and migration requirements for Russian currency control residents.

Notification upon opening, changing, or closing a foreign bank account: Currency control residents are obliged to notify their local tax inspectorate when they open, change, or close personal accounts in foreign banks.

Such notification should be submitted to the local tax authorities in accordance with the individual's registration address in Russia within 30 days of opening, changing, or closing a foreign bank account. The tax inspectorate should stamp the form as confirmation of receipt of the notification. The duplicate of the stamped notification should be kept as proof of submission.

Cash flow report on foreign bank account: Furthermore, as of 1 January 2015, currency control residents are obligated to report on the movement of funds into and out of their foreign bank accounts (i.e., cash flow reporting). Cash flow reports must be submitted to Russian tax authorities by 1 June of the year following the reporting year (e.g., cash flow reports for 2016 must be submitted prior to 1 June 2017). Please note:

- Cash flow reports can constitute grounds for tax and currency control related audits.
- Currency control residents are not obligated to enclose supporting documents with their cash flow reports; however, Russian tax authorities have the right to request supporting documents and information regarding currency transactions and the opening and use of foreign bank accounts. We are aware of written notices issued by Russian tax authorities to individuals considered to be currency control residents requesting that they provide clarification regarding the information specified in their cash flow reports and provide confirmation documents such as bank statements.

If an individual receives such a notice, he or she should not ignore it. It is critical to carefully analyze the situation and provide well-reasoned explanations to the Russian tax authorities.

Additionally, Russian currency control residents are not permitted to receive most types of income directly into their foreign bank accounts (except for a few specific cases directly prescribed by Article 12 of the Federal Law of the Russian Federation, "On Currency Regulation and Currency Control"). Therefore, it is critical to carefully analyze all transactions performed via foreign bank accounts. Salary and other payments connected to the performance of labor outside of Russia in accordance with labor contracts signed with nonresidents can be credited to the foreign bank accounts of currency control residents; however, such funds cannot be used for transactions connected to the transfer (e.g., selling) of property or provision of services in Russia.

Migration requirements

According to legislation introduced in August 2014, Russian citizens must notify their local Federal Migration Service (FMS) authorities if they hold foreign citizenship, a residence permit, or any other document that allows them to permanently reside abroad. Due to the recent abolition of the FMS and delegation of its authorities to the Ministry of Internal Affairs (MIA), the notification should now be submitted to the individual's local MIA authorities. Unfortunately,

there is no clarification or guidance on what documents authorize an individual to permanently reside abroad, so as of today, the position on filing notifications on such documents is still ambiguous.

The legislation stipulates administrative and criminal liabilities for failure to comply with the notification procedures. Individuals must submit a notification form to the MIA within 60 days of receipt of any document entitling them to foreign citizenship or residency.

Participation in the Russian pension plan

According to the social security legislation, Russian companies are obligated to make contributions to the State Pension fund of Russia on behalf of their employees. In practice, when a Russian contract is suspended (i.e., workers go on unpaid leave) or terminated, the Russian employer stops making obligatory pension contributions to the Russian state fund for the benefit of the employees. Accordingly, such employees stop accumulating years of service toward their pensions, which influences the pension amount they will receive upon retirement. In such situations, Russian legislation permits individuals to join the state pension system for the period of their work abroad and make pension contributions to the State Pension Fund of Russia on a voluntary basis in order to remain in the Russian pension system.

Automatic exchange of information

Russia signed and ratified the "Convention on Mutual Administrative Assistance in Tax Matters" (the "Convention") on 4 November 2014. The Convention presents a single global standard for the automatic exchange of tax information, and it has been adopted by more than 80 countries, including Russia.

In light of the Convention, and in an effort to improve the process of international information exchange, please pay attention to the following: In most cases, the international exchange of information is executed upon the request of the authorities, either in Russia or in another country, with regard to certain individuals and implies the disclosure of personal details by banks (e.g., name and address of beneficial owner of the account, account number, account balance, etc.).

In addition, individuals should be aware that Russia signed an agreement enabling US Foreign Account Tax Compliance Act (FATCA) reporting. FACTA uses international financial tools to prevent tax avoidance by US citizens and residents. The agreement establishes a process for Russian financial institutions to collect information on American taxpayers' accounts and provide that information to the US Internal Revenue Service through the Russian Federal Tax Services and vice versa.

Additionally, Russia introduced a law that permits Russian banks and other financial institutions to submit information on foreign taxpayers to foreign tax authorities after receiving the required consent from their clients. At the same time, Russia is currently considering the format and requirements for information requests regarding the bank accounts of Russian citizens, which will need to be submitted by foreign banks and other financial institutions to the Russian tax authorities.

Taking into account all of the above, please note that if an individual has any assets held in his or her foreign and/or Russian bank accounts or income generated from these assets (i.e., investment income, including interest, dividends, and other similar types of income), information on such income can potentially be shared with relevant authorities in various foreign jurisdictions.

Administrative liabilities

Individuals classified as currency control residents who fail to correctly report on the movement of funds via their foreign bank accounts; or fail to file notifications pertaining to opening, changing, or closing foreign bank accounts; or fail to file notifications upon obtaining citizenship or residence permits in another country will be subject to the administrative liabilities:

	Violation	Fine in RUB
Cash flow report on foreign bank account	Incorrect submission	2,000-3,000
	Up to 10-day delay in submission	300-500
	Up to 30-day delay in submission	1,000-1,500
	More than 30 days delay in submission	2,500-3,000
	Repeated failure to correctly report	Up to 20,000
Notification upon opening, changing, or closing a foreign bank account	Incorrect submission	1,000-1,500
	Delay in submission	1,000-1,500
	Failure to present submission	4,000-5,000
Notification upon obtaining citizenship or a residency permit in a foreign country	Incorrect submission	500-1,000
	Delay in submission	500-1,000
	Failure to present submission	Up to 200,000 or up to 400 hours of mandatory compulsory work

Deloitte's view

During the past few years, the requirements of Russian currency control laws and immigration laws pertaining to Russian citizens have significantly increased.

Individuals affected by the new rules should ensure they are in compliance.

However, it should be noted that from the currency control standpoint, there is no associated liability for foreign companies making deposits into the bank accounts of Russian citizens, since such companies are regarded as nonresident under Russia's foreign currency law.

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