



Deoffshorisation:  
What to expect and  
how to respond



# Planned changes to legislation in Russia

## Rules on controlled foreign corporations (CFC rules)

- Legal entities and individuals – Russian tax residents controlling a foreign company/ personal holding structure, which meet certain criteria, will be obliged to include the undistributed profit of the company/ structure into its profits or personal income tax base. Controlling parties may also be obliged to notify Russian tax authorities of CFC and other foreign companies.

- Criteria are planned that would clarify the procedure for determining tax residency in Russia based on the location of place of its effective management. In particular, a foreign company managed from Russia may be recognized as a Russian tax resident and be subject to profit tax in Russia on its worldwide income and to some other taxes.

## Defining tax residency for legal entities

## Exchange of information between tax authorities

- There are plans to improve the information exchange system (including signing of bilateral treaties for information disclosure with other foreign countries as well as offshores), which would allow Russian tax authorities to obtain necessary information from the tax authorities of foreign countries more quickly, helping them to reveal cases of tax evasion more efficiently.
- Russia has signed OECD Convention on mutual administrative aid in tax affairs and currently is in the process of ratification.

- We expect that income arising for a foreign entity from the sale of shares in a company that directly or indirectly (through one or more entities) owns real estate in Russia, as well as financial instruments derived from such shares, excluding shares, which are considered to be traded on a regulated equity market, may be taxed at the source in Russia at the 20% rate in accordance with domestic legislation.

## Taxation of income from indirect sale of shares of companies

# Planned changes to legislation in Russia

## Defining a beneficial owner of income

- There are plans to introduce a single definition of the term “beneficial owner of income” for the purpose of international tax treaties in respect of dividends/interest/royalties in favor of foreign parties. Unless the recipient of income is recognized as its beneficial owner, reduced withholding tax rates will not be applied in Russia.
- In particular a foreign legal entity is not recognized as beneficial owner of income if after receiving income from Russian sources, it transfers the income further in a chain order. In particular, tasks, powers and risks taken by foreign companies should be taken into consideration.



## Recognizing all transactions with tax haven companies as controlled for transfer pricing purposes



- The threshold for transactions with tax haven companies being subject to control for transfer pricing purposes is likely to be removed entirely (currently RUB 60 mln), i.e. a taxpayer shall be obliged to notify the tax authorities and prepare transfer pricing documentation in respect of all transactions with such companies.

## Increasing the transparency of legal entities and other establishments, disclosure of information

- Russian companies will have to disclose their beneficiaries (possibly in their financial statements). A unified register of beneficiaries of Russian companies may be introduced, with access provided to the tax authorities.
- Tax authorities will gain access to audit secrets, i.e. the information obtained during a statutory audit of the company by independent auditors.



## Anti-money laundering measures



- There are plans to introduce effective measures to confront tax evasion and money laundering schemes as well as possible criminal liability.

## Other changes to national legislation and law enforcement practice



**Legislative basis for cooperation between auditors and supervisory authorities**



**Restrictions on the participation of offshore companies in state programs, including receipt of government funding**



**Prevention of abuse of Double Tax Treaties**



**Amendments to the property tax collection procedure (including from foreign companies)**



**Development of the procedure for foreign companies to register with the Russian tax authorities**

# Major risk factors/preconditions for structure diagnostics



**It is strongly advised to carry out diagnostics of the client's corporate structure if any of the listed factors takes place**

## The group's structure contains foreign entities/ personal holding mechanisms

- ✓ The group's corporate structure contains entities registered in offshore jurisdictions
- ✓ The group's corporate structure contains trusts, funds



## Lack of "substance" in a foreign jurisdictions

- ✓ Foreign company does not carry out operational activities in a foreign jurisdiction
- ✓ Foreign company lacks employees / employees do not possess sufficient knowledge and/or skills
- ✓ Foreign company does not have a separate office in its jurisdiction of incorporation
- ✓ Foreign company does not have beneficial ownership rights in relation to its income received, there are limitations on carrying out business transactions, and/or risks and functions of the company are concentrated in another jurisdiction (e.g. Russia)



## Management and decision making process concerning a foreign company takes place in Russia

- ✓ Management of the foreign company is carried out from Russia (all core decisions are taken in Russia)
- ✓ Directors of the foreign company receive detailed instructions from Russia
- ✓ Directors are a nominees or are provided by a secretary company
- ✓ Executives of the foreign company are located in Russia
- ✓ Meetings of the board are held in absentia, decisions are formalized upon the distribution of relevant resolutions to the directors



## There are indicators that the foreign company has presence in Russia

- ✓ Financial and managerial accounting of the foreign company is maintained from Russia
- ✓ Archive and office administration of the foreign company is performed in Russia
- ✓ Staff hiring process for the foreign company takes place in Russia
- ✓ Corporate resolutions and other administrative documents concerning the foreign company's activities are issued in Russia



# Potential risks and recommendations or their mitigation



A company within the Group is registered in one of the blacklisted offshore jurisdictions, or you as an individual own such a company

Evaluate the consequences for the Group/ individual and start developing an action plan, taking into account the facts and circumstances and prospective legislation. Consider removing this company from the Group.



A foreign company within the Group is registered in one of the conventional jurisdictions (Luxembourg, Cyprus)

Pay attention to any legislative initiatives associated with possible changes in the attitudes of the Russian fiscal authorities towards these jurisdictions.



A foreign company within the Group is actually managed from Russia/ performs no business activity in the country of its registration according to its functions or its employees, office and other attributes are not sufficient for its operation

Consider how to substantiate the required level of substance in the foreign jurisdiction and avoid making corporate decisions from Russia.

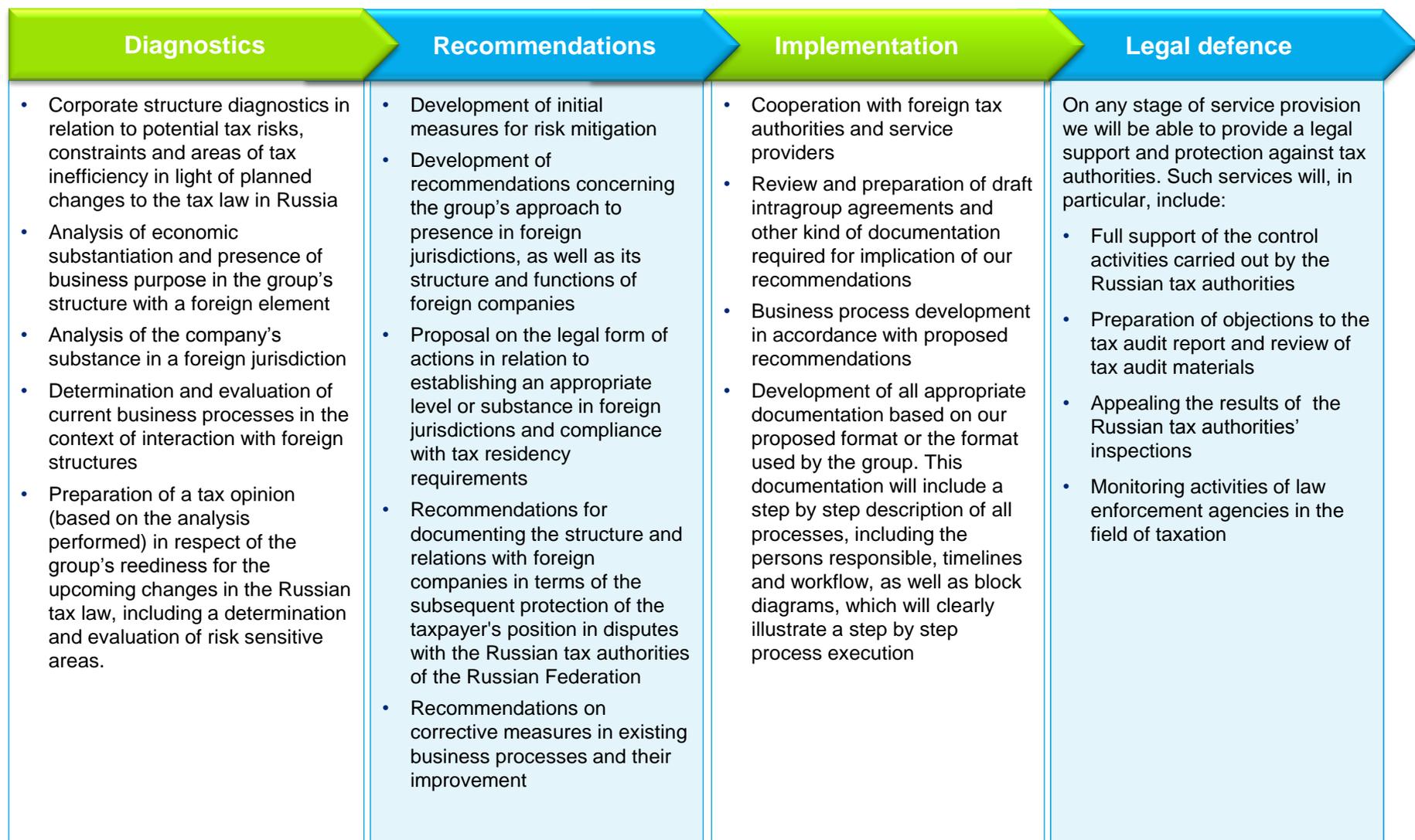


## You are also considered to be at risk if:

- The main purpose or one of the main purposes of a foreign company included within the Group is to obtain tax benefits (lack of business or economic purpose)
- A foreign company's rights to dispose of income (specifically, "passive" one) and perform transactions are limited, and its revenues and expenses do not correspond to the level of its functions, risks and assets, the quantity of employees and their qualifications
- A company within your Group performs transactions with companies registered in offshore jurisdictions (regardless of transaction amount)
- A foreign company within the Group intends to sell shares in a company whose assets (including indirect assets) are more than 50% composed of real estate located in Russia.



# Deloitte services in the context of deoffshorization



# Deloitte services in the context of deoffshorization

## Stage 1. Diagnostics of the group's current structure

- Analysis of documents, activities and processes in the context of the group's foreign presence
- Analysis of the current level of substance in relevant jurisdictions and functions of foreign companies
- Management structure analysis, including an algorithm of decision making processes and document workflow, which should confirm that the group's foreign companies are independent in making their decisions
- Evaluation of risk level in respect of the current group structure:
  - Evaluation of the risk that the foreign company will be treated as a Russian tax resident
  - Evaluation of consequences in respect of CFC rules in Russia
  - Assessment of beneficial ownership risks
  - Assessment of risks concerning future taxation of capital gains on indirect transfers of Russian real estate
- Determination of possible changes in the tax burden of the group

## Stage 2. Development of recommendations and possible strategies for corporate behavior

- Development of initial measures of risk mitigation
- Determination of areas possibly blocking future restructuring possibility and development of measures on their elimination to quickly respond to the adoption of the law in autumn of 2014
- Assessment of suitability to maintain / modify a foreign element in the group's structure
- Development of possible options to optimize a corporate and/or operational structure of the group
- Development of possible corporate behavioral strategies in the context of the new rules (from 2015) and a list of practical measures and actions which have to be taken in priority order (in 2014) in order to guarantee compliance with the new tax rules in 2015 and prior periods

# Potential project results

## Review and diagnostics:

- International taxation
- Business processes
- Legal defense

## Synergy:

- Experience
- Participation in expert groups and constant cooperation with the Russian Ministry of Finance
- Deloitte foreign offices all around the world

Conformity with real business needs

Maximum integration and cooperation



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