



## ProsperoScope Prospects, comments, solutions

### CFC reporting

Quite soon, the Russian tax residents who are recognized as controlling persons in controlled foreign companies (CFCs) will have to file their CFC reporting forms with the local Russian tax authorities.

We take this opportunity to remind you about the filing deadlines for tax resident individuals who are recognized as controlling persons in relation to their CFC as per the year 2015:

1. **The CFC notification** — by **20 March 2017** (non-submission results in a RUB 100,000 fine);
2. **3-NDFL tax return** for 2016, with the CFC's 2015 profit included in the individual's tax base — by **30 April 2017** (tax will be due if the CFC profit exceeded RUB 50 million in 2015).

This issue provides an overview of the most important aspects of CFC tax filings that should be addressed to in the nearest future.

### Action Plan

#### 1. Selection of CFC's profit calculation method

Russian CFC legislation allows for two profit calculation methods:

- 1) based on non-consolidated financial statements subject to Article 309.1 of the Russian Tax Code;
- 2) based on financial statements prepared in accordance with Chapter 25 of the Russian Tax Code;

According to Article 309.1 of the Russian Tax Code, CFC's profit (loss) can be calculated on the basis of its financial statements if one of the following conditions is met:

- I. The CFC permanently resides in a foreign state that has a Double Tax Treaty with Russia in place, except for states not exchanging tax information with Russia;
- II. The auditor's report on the CFC's financial statements contains no adverse opinion or disclaimer of opinion.

In other cases, as well as at the taxpayer's choice, profit is calculated in accordance with Chapter 25 of the Russian Tax Code. Once selected, the method should be used for at least five tax periods.

#### 2. Preparation of CFC's financial statements

In accordance with Russia's current CFC legislation, the taxpayers who are recognized as controlling persons in relation to a CFC must file respective tax returns along with the documents supporting the CFC's profit calculation. Such documents may include the CFC's financial statements and the audit report (if applicable), or primary accounting documents if the CFC's profit was calculated in accordance with Chapter 25 of the Russian Tax Code. However, given that the draft CFC notification form includes a field named "Date of Audit Report," we recommend that the CFC's financial statements and the audit report be prepared and obtained (if applicable) prior to the filing of the 2015 CFC notification, i.e. before 20 March 2017.

We also recommend that all necessary actions be taken as early as possible, as the preparation of the CFC's financial statements, audit of the statements, calculation of the CFC's profit in accordance with the Russian Tax Code, and translation into Russian may take quite a long time.

### 3. Inclusion of CFC's profit in the tax base of the controlling person

If the CFC's profit exceeds the threshold (RUB 50 million for 2015), the individual must file the 2016 3-NDFL tax return. Also, the taxpayer must enclose a documentary proof of the CFC's retained profit.

Please note that where the CFC's profit remains below the established non-taxable threshold, it shall not be included into the controlling person's tax base for the respective tax in a given tax period. According to the Ministry of Finance of the Russian Federation, no financial statements need to be submitted in this case to disclose the CFC's profit. However, we do not rule out the risk that the Russian tax authorities may request financial statements or primary documents from the CFC (depending on the selected calculation method) in order to substantiate exclusion of the CFC's profit from the individual tax return. Hence, we advise that the necessary reporting be prepared in advance to ensure the prompt response to possible requests from tax authorities.

### 4. Consequences of CFC's liquidation before 31 December 2016

Please note that in view of the Ministry of Finance of the Russian Federation, the individuals who liquidated the CFC before 31 December 2016, incur no obligation to file the CFC notification, or include the CFC's 2015 profit into their tax base for individual income tax for 2016. The Ministry's view is not reflected in the legislation and should be treated as an opinion only.

## Contact information

We hope you will find this information useful and interesting. Please do not hesitate to contact us if you have any questions.

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