



## **ProsperoScope** Prospects, comments, solutions

### Extension of tax-exempt liquidation of foreign corporations and structures <sup>1</sup>

The bill extending the tax-exempt liquidation of foreign corporations and structures (e.g. trusts) until 1 March 2019 was released on 19 February.

Read on for an overview of the incentive, an update on the changes from the previous version, advice on how and when to utilise the extension and what to look out for when applying for it.

Our next issue will feature a detailed review of the second round of tax amnesty.

<sup>1</sup> Federal Law No. 34-FZ of 19 February 2018 "On Amendments to Parts I and II of the Russian Tax Code and Article 3 of the Federal Law "On Changes to Parts I and II of the Russian Tax Code (concerning taxation of controlled foreign companies' profit and income of foreign organisations)".

## 1. What was changed?

- The tax-exempt liquidation was extended until 1 March 2019
- The tax exemption now also applies to cash received by private shareholders (settlers) as liquidation proceeds

## 2. Key benefits

- The tax-exempt liquidation enables an individual to receive assets of a liquidated foreign entity without any tax consequences in Russia subject to the following conditions:
  - Along with a tax return, the taxpayer must file an application for tax exemption and the documents attesting to the value of the received assets or rights as per the liquidated entity's accounting records
  - A foreign entity must be liquidated before 1 March 2019

## 3. Transactions involving assets received in tax-exempt liquidation

Apart from the PIT exemption, the legislators also allowed the decrease of income arising from further transactions with such assets by certain expenses. Thus, the law allows reducing the taxable income by the value of such assets as per the liquidated entity's accounting records of the date of receipt (provided it does not exceed the market value) in the following instances:

- Disposal of such assets
- Redemption of securities or collection of loans
- Disposal/redemption of securities donated to or inherited by close relatives
- Sale or partial redemption of a shareholding in a Russian or foreign entity and liquidation of such entities, if such shareholdings were acquired with the tax-exempt liquidation proceeds

## 4. Cash received as liquidation proceeds

Earlier, the Russian Tax Code expressly excluded cash from the tax-exempt asset types. The new law extends the PIT exemption to cash and will be applied retroactively from 2016.

Given the retrospective effect of the changes and the application of the tax-exempt liquidation provisions from 2015, obtaining a refund of the PIT paid on the proceeds from earlier liquidations remains high on the agenda.

Extending the amendments back to 2016 implies a possibility of getting a refund of the earlier paid PIT (during three years of the payment). Yet, we do not rule out that the tax authorities may challenge the grounds underlying the refund, if cash liquidation proceeds were received by a taxpayer in 2015 and not in 2016.

## 5. Clearer rules for transferring assets from nominal holder to beneficial owners

The first round of tax amnesty (ended in 2016) provided for tax-exempt transfer of assets, that included shares of stock, from nominal holders to beneficial owners. However, since the Russian Tax Code does not provide for such exemption directly, there was a risk that the further disposal of such assets could be fully taxed.

The new wording expressly allows reducing the taxable income from the disposal of such assets by their documented value as per the accounting records of the transferring party as at the date of transfer (provided it does not exceed the market value). The amendment is quite important considering the second round of tax amnesty campaign running until 28 February 2019. Read more about the second round of tax amnesty in our newsletter of [26 March](#).

## 6. Instances when you may benefit from the extension

- The liquidation was not complete within the established deadlines (by 31 December 2017) for reasons beyond your control
- The liquidation was delayed due to the restructuring of assets of a foreign entity
- A foreign bank stopped servicing a foreign entity's accounts due to the non-submission of evidence of compliance with Russian tax obligations

We would also recommend taking into account the following:

- A notification of terminated participation in a liquidated foreign corporation must be filed within three months of the liquidation
- If the liquidation was not completed by 31 December 2017, the controlled foreign company (CFC) notification for 2016 must be filed subject to the general rules, including the requirement to reflect the CFC's profit if it exceeded the established threshold. Please note that the outstanding PIT on a CFC's profits for 2015–2018 remains payable; however, a 20-percent penalty for failure to include the CFC's profit into the controlling owner's taxable base will be charged for the tax periods, starting from 2018, but will not apply to the tax periods of 2015–2017
- We cannot rule out that the tax authorities may challenge the value of assets reported by a taxpayer in its tax return, if they have reasons to suspect the taxpayer of unjustified tax benefit. The risk is especially relevant if the liquidation is preceded by an asset restructuring
- The extension of the tax-exempt liquidation does not apply to shareholders who are Russian corporations
- From our experience, a liquidation of a foreign entity may take quite long (e.g. at least three months in the British Virgin Islands and six months in Cyprus), so the process should be launched already now

# Contacts

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



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