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Second round of tax amnesty*: voluntary disclosure of personal assets and bank accounts

The first round of tax amnesty lasted from 1 July 2015 to 30 June 2016. Two years after, the second round is announced: the terms are similar, but there are certain differences, too.

From 1 March 2018 to 28 February 2019, private investors are given another chance to make a voluntary disclosure of their assets and foreign accounts while being guaranteed immunity against prosecution for tax and currency control violations.

Read on to find out:

What assets can be disclosed? What offences will not be covered by immunity guarantees? How do the immunity guarantees work?

* Federal law No. 140-FZ of 8 June 2015 "On voluntary declaration of assets and bank accounts (deposits) by individuals and on amendments to certain legislative acts of the Russian Federation"

Immunity mechanism

- Immunity guarantees are offered to private declarants and some other persons named in a voluntary disclosure form.
- The voluntary disclosure form can be submitted to any tax inspectorate or the central administration of the Federal Tax Service (FTS), personally or via an authorised agent.
- Immunity guarantees apply to violations committed before 1 January 2018, arising from:
 - 1) The acquisition, use or disposal of disclosed assets and controlled foreign corporations ("CFCs")
 - 2) The existence of disclosed foreign bank accounts and currency transactions conducted via such accounts
- The data disclosed in the declaration will not be audited or otherwise processed.
- Disclosure forms will be kept on a centralised basis subject to confidentiality requirements.
- In the second round, each declarant may file only one disclosure form, no adjustments will be allowed.
- First-round filers will be entitled to submit another voluntary disclosure form during the second round, which will not be treated as an adjustment of the previous filing.

Immunity guarantees

In the second round of tax amnesty, the declarants are guaranteed:

- **Criminal relief** with respect to offences provided for in:
 - 1) Article 193 of the Russian Criminal Code: "Evasion of repatriation of funds in foreign or Russian currency"
 - 2) Parts 1 and 2, Article 194 of the Russian Criminal Code "Evasion of customs duties"
 - 3) Article 198 of the Russian Criminal Code "Personal tax evasion"
 - 4) Article 199 of the Russian Criminal Code "Corporate tax evasion"
 - 5) Article 199.1 of the Russian Criminal Code "Evasion of withholding agent's obligations"
 - 6) Article 199.2 of the Russian Criminal Code "Concealment of taxable cash or property by legal entities or sole traders"
- **Administrative relief** with respect to offences provided for in (a non-exhaustive list):
 - 1) Article 14.1 of the Russian Administrative Offences Code "Business operations without state registration or license"
 - 2) Article 15.3 of the Russian Administrative Offences Code "Breach of tax registration deadlines"
 - 3) Article 15.11 of the Russian Administrative Offences Code "Gross violation of accounting and financial reporting requirements"
 - 4) Article 15.25 of the Russian Administrative Offences Code "Currency control violations"
- **Tax penalty relief.**

Tax collection

Apart from the prosecution immunity, declarants will benefit from the guarantee that certain unsettled taxes are not collected. This guarantee applies to taxes due to be paid before 1 January 2018 in connection with the following transactions/operations:

- Acquisition, use or disposal of disclosed assets and controlled foreign corporations (CFCs)
- Opening of a foreign bank account and/or depositing funds to it, disclosed in the voluntary disclosure form

However, personal taxes arising in connection with CFCs' profit or CFCs' assets remain payable regardless of when the respective tax liability arose.

Guarantees offered towards specific assets and bank accounts

There is a number of specific provisions related to particular categories of assets:

Accounts (deposits) with foreign banks

- The law enables the disclosure of bank accounts (deposits) with foreign banks opened prior to 1 January 2018, including the accounts closed as at the date of filing.
- Notifications of account opening/closing or change of account details, which have to be filed before 1 January 2018, as well as cash flow reports for the reporting years 2015 and 2016 may be filed along with the voluntary disclosure form without a penalty for late filing.
- Cash transactions performed via foreign bank accounts up until the date the voluntary disclosure form is filed will be deemed rightful. Therefore, the declarants will be granted a relief from the penalties of up to 75 – 100 percent of the illegitimate currency transactions' value.

Controlled foreign entities

- Guarantees offered with respect to disclosed CFCs will amount to the value of such CFCs' assets as at the date of disclosure.
- Notifications of participation in foreign companies and CFC notifications that have not been filed previously and where the filing deadline expired before 1 January 2018 can be filed along with the voluntary disclosure form. Such notifications will be deemed timely filed and no late filing penalties will apply.
- Tax exemption guarantees do not apply to the personal income tax arising in connection with the CFCs' profit or CFCs' assets

Assets held by nominal owner

- Assets received from a nominal owner that have been disclosed in the voluntary disclosure form will not be treated as taxable income in Russia.
- Where the declarant is a beneficial owner of an asset, he will be entitled to reduce his taxable income from the disposal of such asset by its documented value as per the accounting data of the transferring party as at the date of transfer (provided it does not exceed the market value).
- If a nominal holder and an asset, beneficially owned by the declarant, are disclosed in a voluntary disclosure form, the declarant must attach notarised copies of each nominal holding agreement (trust deed).

Other assets

- Information on the sources of declared assets may be disclosed in any form at the declarant's choice.
- Declarants may attach documents to confirm information on disclosed assets.

Assets that can be disclosed

- Land plots and other real estate, including shares therein
- Vehicles (cars, marine and inland water transport, airplanes, etc.)
- Equity stakes in Russian and foreign companies
- Securities (bonds, derivatives, etc.)
- CFCs the declarants participate in indirectly as at the date the disclosure form is filed

- Foreign unincorporated entities (e.g. trusts) that qualify as CFCs for the declarant as at the date the disclosure form is filed

These assets must be held by the declarant as at the date the disclosure form is filed.

Assets that cannot be disclosed

- Cash, works of art, and most types of rights cannot be disclosed in the voluntary disclosure form.

Guarantee limitations

Guarantees and incentives offered as part of the tax amnesty are subject to certain limitations.

Firstly, the exemptions and benefits only apply to the assets, foreign bank accounts, nominal holders, and other persons that are disclosed in the voluntary disclosure form and are identifiable based on the information provided.

Secondly, no relief from liability will be granted if, as at the date of filing, the declarant is under criminal prosecution, tax or administrative sanctions, or is undergoing a field tax audit.

Please note that the guarantees do not cover all offences. For instance, they do not apply to fraud, money laundering, and other illegal earnings.

Recommendations

As the second round of tax amnesty offers a wide range of opportunities, we recommend that you:

- Thoroughly analyse your assets and accounts for any offences that might be eligible for immunity guarantees and develop a disclosure plan
- Carefully select the time of filing as the disclosure form can only be filed once in the second round
- Restructure the cash flows in your foreign bank accounts, revise the ownership structure of your assets, and make the necessary adjustments to ensure statutory compliance after the filing
- Take the full advantage of both the voluntary disclosure opportunities and the benefits of tax-exempt foreign company liquidation

Deloitte's team will be happy to assist you with developing a tailor-made disclosure and asset restructuring strategy and handle the paperwork for you.

Contacts

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



**Gennady
Kamyshnikov**
Managing Partner
Government Relations
Tel.: +7 (495) 787 06 00



**Svetlana
Meyer**
Managing Partner
Tax & Legal
Deloitte CIS
Tel.: +7 (495) 787 06 00



**Elena
Solovyova**
Partner
International taxation
Tel.: +7 (495) 787 06 00



**Pavel
Balashov**
Partner
Business Process Solutions
Tel.: +7 (495) 787 06 00



**Anton
Zykov**
Partner
Tax Dispute Resolution
Tel.: +7 (495) 787 06 00



**Svetlana
Borisova**
Director
Deloitte Private
Tel.: +7 (495) 787 06 00



**Yulia
Krylova**
Director
International Tax
Tel.: +7 (495) 787 06 00



**Oleg
Troshin**
Senior Manager
International Tax
Tel.: +7 (495) 787 06 00



**Leonid
Pechernikov**
Senior Manager
Private Client Services
Tel.: +7 (495) 787 06 00

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5 Lesnaya Street
Moscow, 125047 Russia