



On 27 May 2014 the RF Ministry of Finance of Russia published a new edition of the draft Federal Law “On amending Parts I and II of the RF Tax Code (in respect of taxation of the profits of controlled foreign companies and increasing the efficiency of the tax administration with respect to foreign companies)” (hereinafter, “the Draft Law”) on its official website¹.

The recent issue of Legislative Tracking, published by Deloitte on 27 May 2014², summarised the provisions of the previous edition of the Draft Law, dated 19 May 2014. The Draft Law is currently expected to be adopted at the first reading by the RF State Duma by mid-June 2014, and its further revision to be postponed to autumn 2014. Representatives of the RF Ministry of Finance have shown eagerness to discuss and further revise certain selected provisions of the Draft Law (based on the edition of the Draft Law published on the RF Ministry of Finance website), including through Open Government.

The key distinctive features of the new edition of the Draft Law are presented further.

Key points:

- Profit received by a CFC before 2015 is excluded from the calculation of the tax base.
- In addition to funds, partnerships and other forms of collective investment, trusts and other forms of fiduciary management have been included on the list of structures falling within the category of CFC. The tax authorities must be notified on participation in such structures.
- The Draft Law postpones the taxation of profit for both individuals and legal entities until the end of the tax period following the end of the CFC’s financial year.
- A new approach to foreign legal entities that will not be recognised as CFCs was introduced. The latest edition of the Draft Law prescribes that a legal entity is not considered CFC, if a) it is a tax resident of jurisdiction that participates in information exchange (“white list”) and b) the tax rate applicable to the legal entity exceeds 15%. Moreover, a company is not considered to be CFC if it is a tax resident of a member-state of the Eurasian Economic Union (Belarus and Kazakhstan).
- In accordance with the current edition of the Draft Law, the exemption from the CFC rules for public companies only extends to groups with a foreign holding company listed on a foreign stock exchange. Therefore, groups with a Russian holding company, shares of which are listed on Russian or a foreign stock exchange, and which consolidates participation in companies considered to be CFCs, will be obliged to notify the tax authorities and pay taxes on the profits of those companies.

¹ http://minfin.ru/common/upload/library/2014/05/main/zakonoproekt_izm_NK_RF_nalogoobl_pribyli_kont_in_kom.pdf

² http://www.deloitte.com/view/en_RU/ru/insights/periodicals/legislative-tracking/3a86242875146410VgnVCM2000003356f70aRCRD.htm

- The Draft Law expands the list of additional requirements for determining the place of effective management of legal entities in Russia:
 - a. Performance of management accounting (in addition to bookkeeping compared to the previous edition of the Draft Law)
 - b. Records management (in contrast to keeping archives as per the previous edition)
 - c. Publishing of orders and other order documents
 - d. Hiring of employees and personnel management
- The new edition of the Draft Law prescribes the possibility to consider a foreign company as Russian tax resident based on the results of a tax audit.
- The Draft Law introduces a definition of the term “actual recipient of income” (“beneficial owner”) to Art. 7 of the RF Tax Code. The Draft Law separately identifies foreign entities that will not be protected by the provisions of international treaties with respect to distribution of passive income. These entities include, in particular, those with limited powers regarding the disposal of income received from CFCs, acting as intermediaries without performing any functions or bearing any risks while directly or indirectly distributing this income (partially or in full) to another entity that would not be able to claim any tax benefits in accordance with the international treaty.
- The Draft Law excludes the minimum level of participation of 20% for the purposes of applying Russian “thin capitalisation” rules. If the current edition of the Draft Law comes into force, payables due to any foreign company related to a Russian one will be considered as controlled. Based on the opinion of the RF Ministry of Finance representatives, this provision simply clarifies the existing rule and provides for the possibility to move from the term “affiliated” to “related” parties.

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