

Legislative Tracking



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27 January 2016

Official Website of the Russian State Duma

[http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=724609-6&02](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=724609-6&02)

Russian Duma approves changes to the concept of controlled debt and thin capitalization rules in the second reading

The Russian State Duma has approved in the second reading draft law No 724609-6, which amends article 269 part 2 of the Russian Tax Code governing the concept of controlled debt and thin capitalization rules. The draft law prepared for the third reading suggests a number of significant amendments to the procedure for defining controlled debt and applying thin capitalization rules.

- Under the draft law, the concept of "controlled debt" will relate to the following debt obligations:
 - Due to a foreign entity that is an affiliated party of the taxpayer under subclause 1, 2 or 9 clause 2 art.105.1 of the Russian Tax Code, if this foreign entity directly or indirectly participates in the taxpayer's charter capital;
 - Due to an entity that is acknowledged an affiliated party of the above foreign entity under subclause 1, 2, 3 or 9 clause 2 art.105.1 of the Russian Tax Code;
 - A debt obligation for which the above entities act as guarantors, surety providers or otherwise secure fulfillment of this debt obligation.

If this draft law is excepted, debt obligations to foreign sister companies will also fall under the concept of controlled debt. Importantly, the current court practice is in favor of applying thin capitalization rules to the debt obligations to foreign sister companies as well.

At the same time, the following debts will not be recognized as controlled:

- Due to a Russian tax resident affiliated with a foreign entity that participates in the taxpayer's charter capital, if this entity has no comparable outstanding debt to the above foreign entity (comparability criteria will also be specified by the revised Art. 269 of the Tax Code);
- Due to a bank secured by a foreign entity that participates in the taxpayer's charter capital or an entity affiliated with this foreign entity if the following conditions are met: the bank is not affiliated and no

loan or the interests payments have been made from the date of the obligation by the above entities securing the debt;

- Debt related to interest income in favor of a foreign entity if the income tax is not withheld from the source under subclause 8 clause 2 art. 310 of the Tax Code (debt to foreign entities that emerges due to the placement of traded bonds subject to specific conditions).

Hence, the draft law excludes bona fide loans obtained from credit organizations and Russian-affiliated entities from the concept of controlled debt.

- It specifies that the amount of the controlled debt for applying thin capitalization rules should be calculated as the aggregate amount of all controlled obligations of this taxpayer.
- It establishes criteria for leasing activities (for the purposes of applying a heightened ratio of controlled debt to equity capital in order to calculate maximum interests).
- It suggests using the discrete method for calculating maximum interest at the end of each reporting period. Currently the discrete method is not stipulated by the Tax Code, but is supported by the clarifications of the tax authorities and judicial practice.
- Debt obligations that are not directly envisioned by clause 2 article 269 of the Tax Code, may be acknowledged as controlled by a court order if it has been proven that the ultimate purpose of the payments under such a debt obligation has been transferring funds in favor of a foreign entity that participates in the taxpayer's charter capital or some entities affiliated with this foreign entity.

If approved, the amendments will enter into force on 1 January 2017. Amendments related to the non-acknowledgment of debts to banks as controlled (under certain criteria) will also apply to 2016.

The draft law is expected be reviewed in the third reading on 29 January 2016.

[http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=953192-6&02](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=953192-6&02)

Amendments to CFC profit taxation approved by the Russian Duma in the second reading

The Russian State Duma has approved in the second reading draft federal law No 953192-6, which introduces amendments to the parts of the Tax Code related to the taxation of profits of controlled foreign companies and income of foreign organizations. The draft law introduces significant amendments to CFC taxation rules (see details in LT of [15 December 2015](#)).

The draft law is expected to be reviewed in the third reading on 29 January 2016.

27 January 2016

OECD Official Website

<http://www.oecd.org/newsroom/a-boost-to-transparency-in-international-tax-matters-31-countries-sign-tax-co-operation-agreement.htm>

Automatic exchange of financial information agreement signed by relevant authorities

Ministers and heads of tax authorities of 31 states have signed a multilateral agreement on the exchange of financial information.

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