



Proposed amendments to Federal Law № 376-FZ of 24 November 2014 “On amending Parts I and II of the RF Tax Code (in respect of taxation of the profits of controlled foreign companies and of the income of foreign organizations)”, which will affect the Russian “deoffshorisation” measures, have been devised.

The major changes are listed below.

Please note that the below information is preliminary. The draft law is expected to be submitted to the RF State Duma soon and should be passed by 1 April 2015. The law is expected to cover a substantial part of the below amendments. However, we do not exclude the possibility that some of them could be revised.

1. Disclosure of information on participation in foreign companies and non-legal entities, as well as controlled foreign companies (hereinafter, “CFC”)

- The first notification deadline to notify the tax authorities of participation in foreign companies (or the establishment of a non-legal entity), where the grounds for disclosure arose earlier than 1 January 2015, should be postponed from 1 April 2015 to 1 September 2015. No notification should be required if the foreign company or non-legal entity is liquidated by 1 September 2015.
- It is proposed that the requirement to notify of the control over, or beneficial ownership in, non-legal entities be removed. As a result, notification would be required only by the settlor of a non-legal entity.
- The imposition of disclosure requirements for fiduciaries in respect of foreign companies and/or non-legal entities they manage is planned (the requirements will be similar to those related to notifications of participation in foreign companies).
- A clarification is expected to be added, indicating that CFC notifications should be filed prior to 20 March of the year following the tax period when the controlling person calculates its share of CFC profits. In parallel, it is also clarified that the controlling person’s share of CFC profits should be calculated on the date of the decision to distribute CFC profits in the year following the year in which the CFC financial period ends, or on 31 December of the same year (i.e. the year following the year in which the CFC financial period ends). We understand that these clarifications will not impact the CFC notification deadline.

2. CFC rules

- An amendment is proposed in respect of methods of calculating CFC profits, i.e. the profits of a CFC could be calculated based on its financial statements, provided the CFC is a tax

resident in a double tax treaty country and its financial statements are subject to voluntary or mandatory audit.

- For the period from 2015 to 2020, it is proposed that CFC profits be calculated based on the Central Bank of Russia's currency exchange rate as of 18 November 2014.
- A proposal to exempt the dividends paid out of profits previously subject to taxation as per CFC rules from tax in Russia has been put forward.
- The exclusion of foreign companies and non-legal entities, in which the controlling person participates through Russian public companies, from the scope of CFC rules is planned.
- The definition of the controlling person of a non-legal entity is anticipated to be completely redrafted. The person will be considered controlling if:
 - The person has the beneficial ownership right to the profits of a non-legal entity and controls its profit distributions (the definition of “beneficial ownership” shall be understood in the context of Article 7 of the RF Tax Code, i.e. it can include a wide range of persons that obtain, directly or indirectly, economic benefits from the non-legal entity);
 - The person is the settlor of a non-legal entity and receives, directly or indirectly, profits from the non-legal entity and has the right to dispose of these profits or receive the property transferred to the non-legal entity back in his ownership.
- It is specified that non-controlling persons of a non-legal entity are not required to determine their participation in foreign companies owned by the non-legal entity. In contrast, controlling persons are required to determine their proportion of participation based on the number of controlling persons of the non-legal entity.
- It is proposed that the provisions relating to CFC profits tax exemptions be amended by:
 - Removing the tax exemption in respect of profits from non-legal entities (however, this is compensated by the new definition of the controlling person of a non-legal entity, see above);
 - Specifying that to obtain a CFC tax exemption, a company incorporated in the Eurasian Economic Union has to be tax resident of a member state of the Union.
 - Exempting the profits of foreign holding companies not tax resident in “black-listed” jurisdictions from CFC tax, provided the following conditions are met:
 - The foreign holding company¹ has been at least 75% directly owned by a Russian

¹ For the purposes of CFC tax exemption, a company is considered a foreign holding company if (a) it does not receive any income, or if its passive income share (excluding the dividends from active foreign holding companies or active foreign companies) is not more than 5%, and (b) it has at least 50% direct ownership in active foreign companies, or at least 75% direct ownership in active foreign holding companies, the dividends from which are excluded from passive income share calculation. A company is treated as an active foreign company if its passive income share is not more than 20%, while a foreign active holding company is a foreign company which (a) does not receive any income, or its passive income share (excluding the dividends from active foreign companies) is not more than 5%, and (b) has at least 50% direct ownership in active foreign companies, the dividends from which are excluded from passive income share calculation.

company for at least 1 year.

- The foreign holding company is an active foreign holding company and has been at least 75% directly owned by a Russian company or foreign holding company for at least 1 year.
- New provisions have been proposed, which should exclude the dividends from Russian companies from CFC income, provided the CFC does not recognize itself as the beneficial owner of the dividends and notifies the tax authorities about it (for the exemption to apply, the controlling person of the CFC should be recognized as the beneficial owner of the dividends).
- The procedure followed by the tax authorities when establishing whether a person is a controlling person has been clarified as follows:
 - The tax authorities will be able to treat a person as a controlling person only if this person's participation in a CFC exceeds 10% and the total shareholding of Russian residents in the CFC is at least 50%. In that case, the person will be considered a controlling person from the date when the grounds to treat him as a controlling person arose. However, no liability for not disclosing the participation in the CFC and not paying the CFC tax should arise.
 - The already established procedure for the tax authorities to recognize a person as a controlling person based on the control criteria (rather than based on the participation criteria) will be retained. The same is true for a controlling person of a non-legal entity. No exemption of liability is available in these cases.

3. Russian tax residency rules

- The rules for recognizing a foreign company as a Russian tax resident are proposed to change as follows:
 - The term “effective management” of the company is substituted with the term “management” of the company.
 - Conducting the majority of board of directors meetings in Russia no longer leads to the recognition of a foreign company as a Russian tax resident.
 - Additional criteria to recognize a foreign company as a Russian tax resident (i.e. place of financial and managerial accounting, work-paper management and archiving, operational management etc.) should only be used if the primary criteria are not met in respect of Russia or another jurisdiction.
 - Voluntary recognition, and subsequent abandonment, of Russian tax residency by a foreign company should not interfere with the possibility of recognizing the company as a Russian tax resident on a compulsory basis, provided there are appropriate grounds.
 - Companies in countries with no double tax treaty are allowed to voluntarily treat themselves as Russian tax residents, provided they operate a separate subdivision in Russia.

4. Other changes

- It is anticipated that the beneficial ownership rules will apply to passive income from non-legal entities.
- It is proposed that the exemption of CFC liquidation proceeds from taxation in Russia be extended to liquidation proceeds from non-legal entities.
- In certain cases, the exemption of CFC liquidation proceeds may be allowed even after the transitional period of the law ends, i.e. even if the liquidation is completed after 1 January 2017, in particular, if:
 - The liquidation of a CFC cannot be completed prior to 1 January 2017 due to limitations of the CFC's personal law or because of the CFC's involvement in a court proceeding.
 - The CFC's personal law sets out a certain share ownership period for the exemption of liquidation proceeds from taxation in the jurisdiction of the CFC, and this period starts prior to 1 January 2015 and ends after 1 January 2017.

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