



LT in focus

Everything you need to know about voluntary disclosures

For the attention of individuals

Our issue of 30 March addressed the draft law On Voluntary Disclosures of Property and Banking Accounts (Deposits) by Individuals (the "Draft Law") published on the official website of the RF State Duma. On 22 May, the RF State Duma approved the Draft Law after the third reading. The Draft Law will go to the RF Council of Federation for consideration and then to the RF President for approval. [The Draft Law was approved by the RF Council of Federation on 3 June – author's note]

This issue of LT looks at the scope, exemptions and benefits of the Draft Law, including the exemption mechanism, as well as at what individuals can do to take advantage of it.

Below is an overview of the options offered by the Draft Law:¹

- The Draft Law introduces a statutory disclosure form for individuals to disclose their assets and accounts (deposits) with foreign banks. It also provides for certain exemptions and benefits for declarants, nominal holders and some other persons
- There are no requirements for the verification or processing of information reported in a statutory disclosure form. Disclosure forms will be kept centrally and will be confidential without any exceptions
- A person who has controlled foreign companies subject to tax disclosures may be exempt from the criminal liability for breaches of tax and customs legislation, as well as from administrative offence liability for unlicensed/unregistered business activities and liability for non-compliance with the tax rules and regulations. Transactions with assets reported in a statutory disclosure are exempt from taxes that remain unpaid, either in part or in full
- Nominee-owned assets other than monetary assets may be transferred to a beneficiary owner without any tax consequences
- Persons who hold foreign bank accounts have a unique opportunity to obtain exemptions from administrative liability for breaches related to foreign currency transactions involving such foreign bank accounts, including payments to accounts
- Even when a person is sure that there are no potential tax claims from the tax authorities with respect to assets, controlled foreign companies or foreign bank accounts, a voluntary disclosure can serve as an extra guarantee



¹ Hereinafter, reference is made to Draft Law No. 754388-6 (*On voluntary disclosures of assets and banking accounts (deposits) and on adjustments to certain legislative acts of the Russian Federation*) submitted to the RF Council of Federation on 23 May 2015.

- With a wide range of exemptions and benefits, the Draft Law can be used to deal with business restructuring risks related to the 'deoffshorisation' initiatives by the Russian Government

Scope of the Draft Law

According to Sergey Shatalov, Russian Deputy Finance Minister, the Draft Law does not pursue fiscal goals, at least in the short term, which is shown by the fact that it does not require any disclosure payments while offering tax benefits. The Draft Law is primarily aimed at providing a simple, transparent and cost efficient mechanism for voluntary disclosures of assets and bank accounts.

The mechanism provides for one-off disclosures via a statutory disclosure submitted by individuals who want to make disclosures about property owned, including land plots and other immovable property, vehicles, securities (including shares) and any interest held in the share capital of Russian and foreign entities. Individuals may also include controlled foreign companies of which they are recognised as a controlling party, except where such individuals hold a direct interest in share capital. An individual may use the statutory disclosure to disclose information about accounts with banks outside the Russian Federation.

Making disclosures under the Draft Law has several advantages. Firstly, a disclosure can mitigate the risk of potential claims from the Russian authorities with respect to breaches before 1 January 2015, which involve the assets and bank accounts being disclosed. Such breaches primarily include the exploitation of loopholes in Russian laws (e.g. imperfection of foreign currency rules and regulations). However, there is more to the Draft Law than just currency control issues. The approval of the Draft Law comes in parallel with the submission of notifications on participation in foreign entities so that disclosure applicants can obtain additional exemptions as part of their business restructuring efforts. For instance, a disclosure applicant could use a statutory disclosure to report controlled foreign companies, including any anticipated liquidations. The RF Council of Federation is considering a draft law with amendments enabling the liquidation of foreign entities without tax consequences (in Russia) for individuals who are shareholders (participants/founders) or in control of such foreign entities (please see our issue of 19 May).

Disclosures can also provide extra confidence to those who are absolutely sure they have been law-abiding citizens. However, even with the exemptions in place, caution should be taken in applying the provisions of the Draft Law. It should be done with a focus on a specific situation and other legislative initiatives that are part of the Government's 'deoffshorisation' effort.

Disclosures may also provide advantages to those who would like to transfer ownership of assets and bank accounts back from nominee holders, obtaining a tax benefit for assets held by nominees. Such a transfer could be a solution for beneficial owners planning to restructure their businesses.

Exemptions and benefits

The Draft Law provides for exemptions and benefits that could be classified as (i) exemptions from liability, (ii) issues related to foreign currency regulations, and (iii) tax exemptions for certain transactions.

Exemptions from liability

In case of the purchase (including related funding activities), use or disposal of assets and in case of activities related to opening accounts and making payments thereto – provided that such assets and accounts have been reported in a statutory disclosure – disclosure applicants, nominee holders and, in some cases, persons responsible for the administrative or management processes of qualifying companies may be exempt from:

Criminal liability where they have committed offences as defined by the following Articles of the Russian Criminal Code:

1. Article 193 *Avoidance of obligations to repatriate funds in a foreign currency or the RF currency*
2. Part 1 and Part 2 of Article 194 *Avoidance of customs payments payable by entities or individuals*
3. Article 198 *Avoidance of taxes and/or duties payable by individuals*
4. Article 199 *Avoidance of taxes and/or duties payable by entities*
5. Article 199.1 *Failure to comply with the responsibilities of a tax agent*
6. Article 199.2 *Concealment by an entity or a self-employed entrepreneur of funds or property on which taxes and/or duties must be paid*

It can be seen that the exemption, which is limited to tax and customs offences, excludes economic offenses provided for by articles such as Article 174 *Laundering of money or property acquired by other persons as a result of criminal activities* and Article 200.1 *Smuggling of cash and/or cash instruments*.

Administrative liability where there are grounds as provided for in Article 14.1 *Carrying out unlicensed/unregistered business activities* of the Russian Code of Administrative Offences (the "Russian Administrative Code"), as well as in case of foreign currency transactions and/or payments to bank accounts (deposits) reported in a disclosure (i.e. exemption from the administrative liability provided for in Article 15.25 of the Russian Administrative Code, including a penalty ranging from 75% to 100% of funds that have not been paid to accounts with authorised banks, or a penalty ranging from 75% to 100% of the amount of an illegal foreign currency transaction).

Tax liability the tax authorities will not carry out desk and field tax audits on the basis of disclosures and accompanying documents and information, and the reported information cannot be used as evidence for tax audits.

The lawmakers have provided a number of guarantees for the exemptions above. Firstly, information reported in a disclosure is subject to tax confidentiality without any exceptions, with a disclosure applicant being the only person who may request the information from the tax authorities. Secondly, an officer may be held criminally liable for the divulging or loss of submitted disclosures. Thirdly, a tax officer may not be taken as a witness for the purposes of interrogation or be held liable for a failure to give evidence with respect to facts that have become known to such a tax officer as a result of a submitted disclosure. Fourthly, all the disclosures submitted will be kept in one place, i.e. in the central office of the Federal Tax Service of the Russian Federation.

Issues related to foreign currency regulations

The lawmakers offer an exceptional opportunity to lower the risks related to foreign currency regulation and control. For instance, the Draft Law provides the following options:

1. A person can file a statutory notification of accounts (deposits) existing as at 1 January 2015 with foreign banks unless such a notification has been filed before. A notification so filed will be considered compliant with the notification period
2. Funds transferred to bank accounts reported in a disclosure as at 1 January 2015 are considered to have been transferred in accordance with the Law on currency regulation and currency control²
3. Foreign currency transactions completed before 1 January 2015 with the use of foreign bank accounts reported in a disclosure are considered compliant with Federal Law No. 173-FZ

In accordance with Federal Law No. 173-FZ, any currency transaction that is not expressly permitted is illegal. Before August 2014, the scope of permitted transactions involving the transfer of funds to accounts with foreign banks was quite limited, which resulted in many challenges and a risk of penalties for individuals who, due to objective factors, could not transfer funds received from Russian foreign currency non-residents to an account with a Russian bank.

² Hereinafter, the reference is made to Federal Law No. 173-FZ of 10 December 2003 *On Currency Regulation and Currency Control*.

Even with the amendments introduced in August, the scope of permitted transactions remains limited. For example, currently, transfers to foreign bank accounts are not acceptable as regards transfers of (i) funds received by a resident as a result of the disposal of external securities, (ii) income on redeemed bonds, (iii) income on leases or the sale of property located in the Russian Federation, (iv) payments for the reduction of capital of a foreign company that is not an issuer of foreign securities (e.g. a partnership, a limited liability company, etc.) or in a situation where the laws of incorporation of a country do not provide for definitions of share capital and capital reductions are prohibited.

Tax exemptions for certain transactions

The Draft Law and the related amendments to the Russian Tax Code define several situations in which transactions may be exempt from tax.

Firstly, apart from the above exemptions from tax liability, the lawmakers have also provided options for exemptions from taxes that have been unpaid, either in part or in full, with respect to transactions before 1 January 2015 that involve (i) the purchase (including related funding activities), use or disposal of assets by controlled foreign companies, or (ii) the opening of, and transfers to, foreign accounts that have been reported in a statutory disclosure form. It is interesting to note that this provision applies not only to disclosure applicants but also to other persons reported in a statutory disclosure form.

Secondly, the transfer of assets from a nominee holder to a beneficiary owner is not recognised an income for the purposes of the Russian Tax Code provided that the assets and the nominee holder have been reported in a statutory disclosure.

Limitations

The above exemptions and benefits have some limitations. First of all, it is quite logical that the exemptions and benefits only apply to assets, foreign banks accounts, nominee holders and other persons that have been reported in a statutory disclosure and are identifiable based on the information provided in the statutory disclosure.

Except for the exemptions from tax collection and certain issues related to foreign currency regulations, the exemptions and benefits are subject to the following limitations:

1. Exemptions from liability for actions committed by a person apply to the extent that as at the filing date of a statutory disclosure (i) a person is not involved in criminal proceedings as a result of actions committed, (ii) there has been no administrative offence/tax case filed against such a person, or (iii) no field tax audit has been started with respect to such a person
2. Any movable property not meeting the above criteria that, at the filing date of a statutory disclosure, is located in a country that is on the FATF list or in a country that does not exchange tax information with Russia must be repatriated to Russia. Movable property can also include securities. Except as specified above, any other repatriations are voluntary. The Draft Law does not establish an exact period for movable property to be repatriated

Exemption mechanism

After filing a statutory disclosure with the local tax authorities or the central office of the Federal Tax Service of the Russian Federation, the disclosure applicant will be issued a copy of the disclosure marked as accepted and a copy of the list of accompanying documents signed by a tax officer. The disclosure applicant can then file these copies with government authorities or banks as a proof of the entitlement to the rights to the exemptions and benefits provided for by the Draft Law.

Government and bank officers may send a submitted copy of a statutory disclosure to the central office of the Federal Tax Service of the Russian for the purpose of comparing the copy with the original.

Within five days of the receipt of the copy, the Federal Tax Service should send a reply on whether the copy is genuine.

To become exempt from criminal liability, the disclosure applicant may include copies of said documents in case files as evidence. The court may not refuse the inclusion of these documents in the case file. The lawmakers have provided an option specifying that where a reasoned refusal to close criminal proceedings has been issued by the head of investigating authorities (the only person with the right to issue such a refusal), it should immediately be submitted to the Prosecutor General and the Presidential Ombudsman for Entrepreneurs' Rights.

Next steps

A statutory disclosure may be submitted from 1 July 2015 to 31 December 2015. No exceptions are permitted. Therefore, it is time to start considering your situation: what assets and accounts need to be disclosed and how can the voluntary disclosure be aligned with the notification of participation in foreign entities, the earliest deadline for which is set as 15 June.

You can start with collecting data and documents for your disclosure, including:

- Details of assets and accounts to enable the identification of such assets and accounts and avoid ambiguous interpretations of the applicable exemptions and benefits
- Notarised copies of each nominee agreement, if any, which you need to attach to your statutory disclosure
- Notarised Russian translations of the accompanying documents
- Other supporting documents or information

At this point, it is important to note that a statutory disclosure can only be resubmitted provided that there has been a written refusal to accept the initial disclosure. After accepting a statutory disclosure, tax authorities will not to accept any subsequent revised versions that you may submit to support your rights to the exemptions and benefits.

We would be glad to provide you with integrated assistance in the application of the Draft Law.

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