

## LT In Focus

# Overview of the Draft Law on CbC and CRS

The Convention on Mutual Administrative Assistance in Tax Matters (hereinafter, the Convention) became effective for the Russian Federation on 1 July 2015. It contains provisions enabling the automatic exchange of information on tax matters between parties. Moreover, pursuant to the Convention, the exchange of country-by-country (CbC) reports and financial information requires the signing of separate agreements between competent authorities of the parties. Such agreements include a multilateral competent authority agreement on the exchange of country-by-country reports and a multilateral competent authority agreement on the automatic exchange of financial account information for tax purposes, which are executive to the Convention.

The draft of the Federal Law "On Amendments to Part I of the Tax Code of the Russian Federation (regarding the implementation of international automatic exchange of information on financial accounts and documents related to international groups of companies)" (hereinafter, the Draft Law), which was published on a [unified portal](#) on **6 September 2016**, was developed to ensure the compliance of the Russian Federation with the covenants of multilateral agreements and is aimed at improving the application of the Tax Code of the Russian Federation (hereinafter, the RF Tax Code) as part of tax control over cross-border deals.

This publication presents an analysis of the key aspects and provisions of the Draft Law.

### International exchange of financial account information

On 12 May 2016, the Russian Federation signed a multilateral agreement on the automatic exchange of financial account information for tax purposes (Model Competent Authority Agreement or MCAA), which facilitated compliance with the OECD Standard for automatic exchange of financial account information (Common Reporting Standard or CRS). Under the CRS financial institutions of participating countries provide information on their clients' financial accounts to local tax authorities, who subsequently share such information with each other.

The Draft Law is developed to allow Russian financial institutions to comply with CRS requirements as well as regulate CRS application in Russia:

Defines the list of financial institutions to which its requirements apply

Defines the meaning of "financial" information to be submitted to the Federal Tax Service

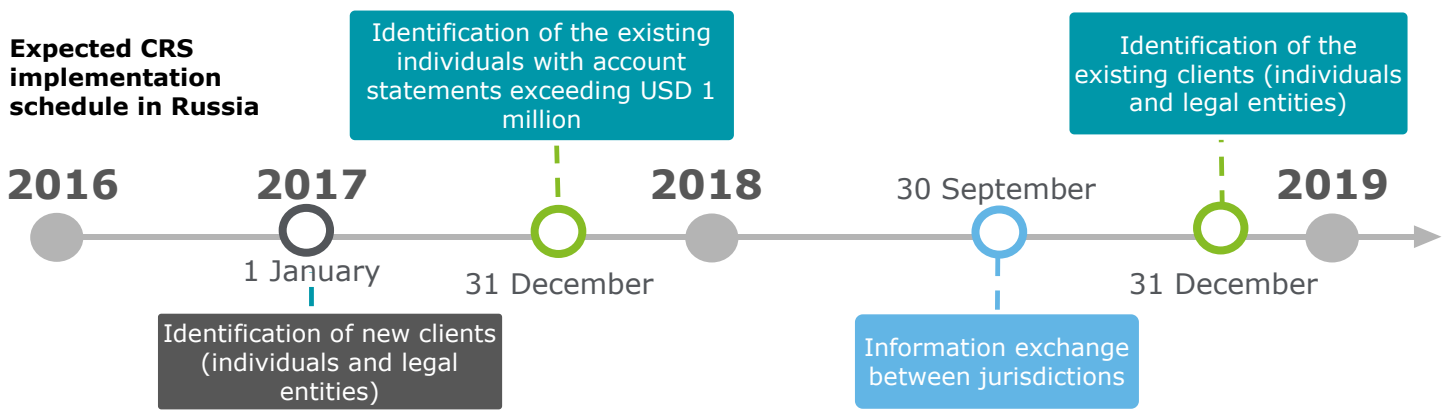
Defines the role and functions of the Federal Tax Service in the information exchange process

Defines the list of parties involved in the information exchange process

Defines the rights and obligations of financial institutions and their clients

Defines the responsibility for non-compliance with the requirements

If adopted, the Draft Law will come into effect in part concerning the CRS compliance on 1 January 2017, which is in line with the expected commencement of the CRS compliance by the Russian Federation. Russia intends to commence the information exchange under the CRS in 2018.



### Key requirements

The Draft Law makes financial market organisations responsible for submitting to the Federal Tax Service the following:

- Information on clients, beneficiaries and parties exercising direct or indirect control, **who are foreign tax residents**;
- Financial account information on such clients;
- Other information concerning the financial services agreement between the client and the organisation.
- Non-state pension funds (NPFs);
- Private equity investment funds;
- Managing partner of the investment partnership;
- Other organisation or structure without legal personality, which accepts funds or other assets from clients for deposit, management, investment or other purposes to the benefit of and, directly or indirectly, at the expense of clients.

### Financial market organisations (FMOs)

Financial market organisations are defined as:

- Credit institutions;
- Life insurance companies;
- Professional securities market participants involved in brokerage and securities management operations;
- Depositories;
- Managing companies;

*The disclosure of such information neither violates bank secrecy nor requires the consent of clients, beneficiaries or controlling persons.*

### Client

A party that concludes (has concluded) a financial services agreement with a FMO.

### Beneficiary

A party (or foreign structure without legal personality), to the benefit or in favour of which the client acts, including on the basis of agency, commission, fiduciary or trust management agreements or otherwise.

### Controlling person

A party (or foreign structure without legal personality), whose direct or indirect ownership in the share capital (or its equivalent) of the client or beneficiary exceed 25 percent, or that can exercise control over such client or beneficiary on other grounds.

### Financial services

Services related to receiving and placing funds or other assets from clients by FMOs for deposit, management,

investment or other purposes to the benefit of clients or at the expense of clients.

*The Draft Law allows the exclusion of certain organisations and services from the term "financial", as the risk that they may be used for tax evasion purposes is low.*

*The procedure and timing for information disclosure by FMOs and the scope of such information are to be determined by the Russian government subject to approval by the Bank of Russia.*

## Responsibilities of FMOs and their clients for identification purposes

The Draft Law provides for the following FMOs' responsibilities with respect to client identification process:

- Inquiry of the required information from clients;
- Processing and analysis of the information received;
- Taking reasonable and appropriate measures to define the tax residency of clients, beneficiaries and persons exercising direct or indirect control, including a review of the accuracy and completeness of the information provided by clients.

To fulfill these obligations, FMOs may use the information received as a result of the compliance with the RF anti-money laundering and anti-terrorism legislation as well as publicly available information (not specified by the Draft Law).

Clients of FMOs must disclose the information requested by FMOs with respect to themselves, beneficiaries and controlling persons.

*Measures for determining the tax residency of clients, beneficiaries and controlling persons will be defined by Russian legislation.*

## Refusal to conclude an agreement/termination of existing agreements

The Draft Law defines a number of situations where FMOs may refuse to conclude an agreement or may terminate existing agreements with clients:

- A client provided the requested information, but the FMO identified the inaccuracy or incompleteness of such information or any discrepancy between the information provided by the client and the information available to the FMO;

- A client did not provide the requested information.

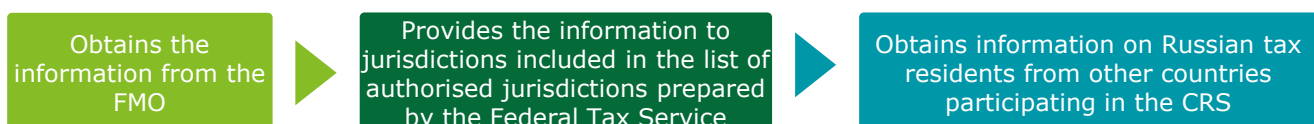
The Draft Law also specifies the general aspects of the refusal to conclude an agreement and termination of agreements, emphasising that the details of such procedures will be defined by the Bank of Russia.

## Type of financial information to be provided to the Federal Tax Service

General requirements	<ul style="list-style-type: none"> <li>• Information on clients' transactions, accounts and deposits;</li> <li>• Information on payments and transactions regarding accounts, deposits and agreements, under which FMOs accept funds or other assets from clients for deposit, management, investment or other purposes to the benefit of or, directly or indirectly, at the expense of clients.</li> </ul>	
Special requirements	Insurance company	<ul style="list-style-type: none"> <li>• The amount of liabilities under voluntary life insurance to clients or beneficiaries.</li> </ul>
	Professional participants and managing companies	<ul style="list-style-type: none"> <li>• The amount of cash and the value of clients' assets.</li> </ul>
	Depositories	<ul style="list-style-type: none"> <li>• The amount of assets accounted in depositories.</li> </ul>
	NPFs	<ul style="list-style-type: none"> <li>• The amounts accounted on pension accounts.</li> </ul>
	Clearing organisations	<ul style="list-style-type: none"> <li>• Liabilities of clearing companies to their clients.</li> </ul>

*A fine of RUB 300,000 is imposed for violation of the procedures for establishing clients' tax residency; a fine of RUB 500,000 is imposed for violation of the procedure, scope or timing for information disclosure.*

## Role of the Federal Tax Service in the information exchange process



Any information received by the Federal Tax Service may be used by the Federal Tax Service to fulfill its control and supervision responsibilities under Russian tax legislation.

## Documentation related to multinational enterprise groups

Earlier in our publication, as of 20 April 2016, the Draft Law "On Amendments to Part I of the Tax Code of the Russian Federation (regarding the preparation and submission of country-by-country report and notifications of participation in multinational enterprise groups)" was analysed.

### New developments

The finalised Draft Law describes the key requirements of the documentation to be submitted to the federal tax authorities by taxpayers participating in multinational enterprise groups.

In particular, the documentation related to multinational enterprise groups will include:

- Notifications of participation in multinational enterprise groups;
- Country-by-country information related to a multinational enterprise group, which the taxpayer participates in:
  - Global documentation;
  - National documentation;
  - Country-by-country report.

Moreover, the current Draft Law contains a provision,

### Key definitions

The Draft Law defines the following key concepts required to introduce the country-by-country report submission liability:

- a multinational enterprise group;
- a participant in a multinational enterprise group;
- a parent company of a multinational enterprise group, which is responsible for the preparation and submission of country-by-country report;
- an authorised participant in a multinational enterprise group, which is a company that may prepare and submit country-by-country report instead of the parent company (in compliance with the conditions stipulated by the Draft Law);
- a financial year;

### Revenue size

The requirements set by the Draft Law apply to a multinational enterprise group whose aggregate revenue recognised in the consolidated financial statements for the financial year preceding the financial year for which country-by-country report is submitted amounts to at least RUB 50 billion. The Draft Law clarifies that if the consolidated financial statements are

### Notification

Notification of participation in a multinational enterprise group is submitted by taxpayers participating in multinational enterprise groups for no longer than three months from the end of the last financial year or for no longer than three months from the date which is the last day of the period for which the consolidated financial statements are prepared by the multinational enterprise group.

The Draft Law specifies the list of data to be included in the notification. Namely, the group's parent company and the authorised participant in the group (if any) must be indicated as well as the date, which is the last

Afterward, the Draft Law was refined. The new suggested requirements regarding multinational enterprise group reporting will be discussed in this publication.

according to which a foreign tax authority may participate in field and desk tax audits if stipulated by international tax treaties.

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*The Draft Law introduces an amendment to the title of Section V.1, it reads as follows: "Related parties and multinational enterprise groups. General provisions on prices and taxation. Tax control over transactions between related parties. Pricing agreement. Documentation related to multinational enterprise groups."*

- consolidated financial statements.

These concepts generally coincide with those proposed by the OECD Guidelines.

Normally, the parent company of a multinational enterprise group must prepare and submit country-by-country reports. In certain cases stipulated by the Draft Law, an authorised participant in the multinational enterprise group is appointed to prepare and submit country-by-country report.

not prepared in Russian roubles, the aggregate revenue is assessed in an equivalent amount calculated using the official foreign exchange rate to the Russian ruble as at the end of the financial year.

day of the period for which the consolidated financial statements are prepared or would be prepared. Moreover, a taxpayer is permitted to not provide a notification (exempt from liability to provide a notification) of its participation in a multinational enterprise group if a parent company, an authorised participant (a Russian or foreign organisation that voluntarily acknowledged its residency status) or a participant in a multinational enterprise group provided a notification of participation in a multinational enterprise group that included the information of all Russian tax residents participating in such group.

## Country-by-country information

### Global documentation

Global documentation is provided at the request of the federal tax authorities within three months from the date of such request, but no earlier than 15 months from the end of the last financial year or no earlier than 15 months from the date of preparation of the last consolidated financial statements by the multinational enterprise group. Such a request may be made by an authorised authority during the audit of transactions between related parties (Art. 105.17 of the Russian Tax Code) or upon request from a competent authority of a foreign country.

Pursuant to the Draft Law, the global documentation should contain the following information:

- on the structure of a multinational enterprise group, including the information on related parties and

### National documentation

National documentation is also provided at the request of the federal tax authority. The timing for the provision of national documentation is similar to the timing stipulated for the global documentation.

Pursuant to the Draft Law, the national documentation should contain the following information:

1. on the operations of a taxpayer that perform a controlled transaction (a group of similar transactions), in particular:
  - on the organisational structure;
  - on business activities and market strategy;
  - on existing competition.
2. a description of a controlled transaction (a group of similar transactions):
  - reasons for recognising a transaction (a group of similar transactions) as controlled and a list of parties;
  - a description of a controlled transaction;
  - commercial and/or financial terms of a transaction;
  - the amount of received income (revenue) and/or amount of incurred expenses (losses) as a result of a controlled transaction;

### Country-by-country report

The country-by-country report is submitted by a taxpayer within no longer than 12 months from the date which is the last day of the period for which the consolidated financial statements would be prepared by the multinational enterprise group.

Pursuant to the Draft Law, the country-by-country report should contain the following information:

1. total income (revenue) received from transactions for the financial year, including a breakdown by transactions with subsidiaries (associated parties) and transactions with other parties;
2. the amount of profit (loss) before tax;

geographical markets;

- on the operations of a multinational enterprise group, including a description of the activities of a taxpayer and its related parties, a list and description of the key provisions of agreements conducted between related parties, a functional analysis and other information;
- on the intangible assets of a multinational enterprise group;
- on the intragroup financial activities;
- other information (consolidated financial statements, a list and brief description of the existing pricing agreements and other).

– economic benefits resulting from a controlled transaction;

– calculation of the Arm's length range on a controlled transaction with a description of the applied approach;

– a description of adjustments applied (if any);

– the functional analysis of activities of parties;

– justification of reasons for selecting and applying method (if the methods provided for by Chapter 14.3 of the Russian Tax Code are applied);

– copies of all existing intra-group agreements;

– copies of pricing agreements and other tax clarifications applied to transactions between related parties, in which the federal or regional tax authorities were not participated;

3. financial information:

– a summary of the financial information used when applying the methods provided for by Chapter 14.3 of the Russian Tax Code;

– accounting (financial) statements of a taxpayer for the last reporting period, including audit reports (if any);

– other information.

3. the amount of profit tax paid (income/profit tax paid by a foreign entity) or its equivalent;

4. the amount of profit tax accrued in the current year (corporate/profit tax accrued by a foreign entity in the current year);

5. the amount of share capital (stated share capital);

6. the amount of accumulated profit (retained earnings);

7. average headcount;

8. the amount of tangible assets (except for cash and

- cash equivalents);
9. identification data about each participant in the multinational enterprise group, including the country (territory) of incorporation, tax residency status and principal business activities of each.

The data must be aggregated by country.

The Draft Law also provides for the submission of other additional information, presenting more detailed data on the amounts and information listed above.

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*The Draft Law shall come into effect on 1 January 2017. Taxpayers may apply the new provisions to financial years beginning earlier than 2017.*

## **Fines**

The following fines are to be imposed for illegal failure to submit or provision of inaccurate information by taxpayers participating in multinational enterprise groups:

- a fine of RUB 50 thousand – with respect to notification of participation in a multinational enterprise group;
- a fine of RUB 100 thousand – with respect to each document included in the country-by-country information.

The Draft Law stipulates a transition period during which these fines will not apply. This period will cover documents (notifications and country-by-country information) prepared for 2017-2019.

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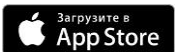


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## TaxSmart App



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