COSTAS TSIELEPIS & CO
CHARTERED ACCOUNTANTS

Russian tax residency rules clarified

Daniil Ruderman
Tax Consultant and Representative, Moscow
and
Alexis Tsielepis
Director, Head of Taxation

Moscow, 4 September 2015 – **Russian Tax Authorities recently clarified that the tax residency status of individuals shall not only be defined based on the 183 days rule, but also on those individuals' permanent place of living or their centre of vital interests.**

The clarifications were outlined by the Russian Federal Tax Service in Letter No. ZN-3-17/2536@ dated 30 June 2015 relating, among other issues, to Russian tax residency rules for individuals with reference to double tax treaty provisions.

The Russian tax authorities seem to believe that individuals may be treated as Russian tax residents if, irrespective of spending less than 183 days in Russia during a calendar year, they own residential premises in Russia or have a permanent registration ("*postoyannaya registratsiya*") in residential premises in Russia, or their family lives in Russia, or their business/place of work is in Russia.

In our view and in many other industry experts' view as well, this logic of the tax authorities is legally incorrect as the Russian Tax Code does not support it. The Tax Code provides only for the 183 days rule mentioned above. Thus, if an individual spends less than 183 days in Russia during a calendar year he or she automatically loses Russian tax residency status. Further, double tax treaty provisions referred to by the tax authorities (namely, Article 4.2 of the treaty) shall apply for defining tax residency status of an individual only if an individual is treated as a tax resident in both contracting States (the so called "tiebreaking rule"). However, this is not the case if an individual spends less than 183 days in Russia.

That said, it must be noted that this is not the first time when the tax authorities express such a view. A similar position was provided in their Letter No. OA-3-17/87 dated 16 January 2015.

It may be the case that by these letters the tax authorities are trying to create a foundation for challenging those individuals who waived their Russian tax residency status in order not to comply with CFC legislation. Although, again, these letters are not in compliance with current Russian law, such a view of the tax authorities may be potentially damaging.

Russian Deoffshorisation Legislation Update

Meanwhile, it has been reported that another portion of changes to the Russian deoffshorisation legislation may be adopted this autumn. Currently, only a preliminary draft

of these changes is available. A full analysis of the changes will be provided as soon as the relevant bill is introduced to the State Duma.

In a related subject, at the beginning of July the tax authorities announced the first results of the deoffshorisation campaign. According to press reports, by 15 June 2015 (the deadline for submission of notifications on the participation in non-Russian companies and structures), only 3.203 notifications were submitted to the tax authorities (1.004 by companies and 2.199 by individuals).

The initial results of the campaign were described by industry experts and commentators as “hardly successful” although the government officials say that this is only the beginning and such results were expected.