



Russia further amends CFC rules

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16 February 2016 - A little over a year after Russian Controlled Foreign Company (CFC) rules and other deoffshorisation measures entered into force on 1 January 2015, a new bill aimed at further developing these rules and measures has been signed into law by President Vladimir Putin.


Federal Law No. 32-FZ was signed by the Russian President on 15 February 2016. Below is an overview of the most important changes introduced by the law:

- a) One of the most important positive amendments is that the law extends the number of cases when profit of a CFC may be calculated based on its financial statements for the financial year (and not based on Russian profits tax rules provided by the Tax Code).

Under the rule which existed before the amendments, the profit of the CFC could have been calculated based on its financial statements for the financial year only if these financial statements were subject to an obligatory audit and the CFC was registered in a jurisdiction which has a double tax treaty with Russia. In all other cases, the profit of the CFC should have been calculated based on Russian domestic profits tax rules (Chapter 25 of the Tax Code).

The new law changes the above provision and stipulates that profit of the CFC may be calculated based on its financial statements for the financial year in any of the below two cases:

- (i) The CFC is registered in a jurisdiction which has a double tax treaty with Russia and this jurisdiction provides for the exchange of tax information with Russia; or
 - (ii) Irrespective of the jurisdiction of CFC incorporation, the financial statements of the CFC were subject to voluntary audit and the relevant audit report does not provide for the negative opinion or the refusal to make the opinion.
- b) Furthermore, the law extends from one to three months the term for notification by Russian tax residents of the tax authorities on the participation in non-Russian companies (or on the establishment of non-Russian structures, such as fund, trust etc.) and on termination of such participation.

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- c) The law provides that the receipt of control rights to non-Russian structures (such as fund, trust etc.) shall not be considered as a taxable income for individual if this individual obtained these control rights from his or her close relatives (spouses, parents, children, grandfathers and grandmothers, grandchildren, brothers and sisters).

On the one hand, this provision appears to be taxpayer friendly since it directly exempts the mentioned individuals from Russian personal income tax on the receipt of control rights, for instance, to trusts settled by their close relatives.

However, on the other hand, this new provision seems to state that if such control rights are not obtained from a close relative (for instance, from uncle, aunt, cousin or a friend), then it constitutes taxable income of the individual. That said, from the law it is unclear how this income could potentially be calculated.

Finally, it is unclear, whether the receipt of beneficiary rights (without control rights) to non-Russian structures constitutes taxable income for the individual.

- d) The law introduces another exemption under which any property transferred to the non-Russian structure (such as fund, trust etc.) by its settlor or his or her close relatives (spouses, parents, children, grandfathers and grandmothers, grandchildren, brother and sisters) or by CFC controlled by the above persons, shall not be considered as a taxable profit of this non-Russian structure for Russian CFC rules purposes.
- e) Further, according to the law, tax exemptions and benefits provided by the Tax Code in case of liquidation of CFCs are extended for an additional year. In this respect, under general rule, to obtain tax benefits, the CFC liquidation procedures should be finalized before 2018 (the historic rule provided for 2017 deadline for liquidation). That said, in certain cases, the law provides for further extension of the above liquidation deadline.


It is noted that such tax exemptions and benefits include the exemption for the profit of the CFC from the sale of securities or proprietary rights to CFC's controlling persons or their Russian affiliates, the exemption for non-Russian company's liquidation proceeds received by an individual or corporate shareholders and some others.

The law further adds specific rules for the calculation of the tax cost of securities received by individuals as a result of liquidation of non-Russian companies.

- f) The law introduces tax exemption for individuals and legal entities in relation to dividends received by them from CFC's profit if such profit has already been declared by this individual or legal entity and the relevant tax has already been paid.

This amendment is positive and aims at eliminating the risk of double taxation of CFC's profits in the hands of Russian tax residents.

- g) Besides CFC rules amendments, for the purposes of application of reduced withholding tax rates under relevant double tax treaties, the law introduces an obligation for non-



Russian companies to confirm their beneficial (actual) rights to income payable to them. Such confirmation shall be provided to the Russian company paying the income and acting as a tax agent before the actual payment is made.

Before the new law, the Tax Code provided only for the right of the Russian tax agent to request such a confirmation from a non-Russian recipient of income.

It should be noted that although the law addresses many uncertainties existed in the deoffshorisation legislation and clarifies the wording of the Tax Code, it still lacks regulation on certain important issues. In particular, such unresolved issues include the procedure for the payment of Russian tax in a situation where a non-Russian company sells shares of companies the assets of which directly or indirectly mainly consist of Russian immovable property.

As always, we will keep monitoring any further developments relating to Russian deoffshorisation measures and keep you informed.