



Amendments to deoffshorisation law approved by Putin

The draft amendments introducing a number of important changes to the Russian "deoffshorisation" legislation, which is in force as of 1 January 2015, was signed into Law by President Vladimir Putin on 8 June (Federal Law No. 150-FZ).

The most notable amendments were introduced to Russian Controlled Foreign Company (CFC) rules (including the long-awaited additional exemptions from these rules) and to Russian tax residency rules for legal entities.

Amendments to CFC rules

1. More clarity was added in relation to application of CFC rules to non-Russian structures (such as trusts, funds etc.).

In particular, it was added that, under general rule, a founder of a non-Russian structure shall be treated as a controlling person to such structure.

However, another person may be treated as a controlling person to the structure as well if this person (a) may influence decisions on the distribution of profits by this structure and (b) if one of the below conditions is met:

- the person has actual right to income received by the structure;
- the person has right to dispose of the assets of the structure;
- the person has right to receive the assets of the structure in case of the structure's liquidation.

2. An exemption from CFC rules for the founders of irrevocable trusts (and other similar non-Russian structures) was added.

This is one of the important exemptions that were promised earlier by the Russian Ministry of Finance.

According to the amendment, the founder of the structure shall not be treated as a controlling person to the structure if all the below conditions are met:

- the founder is not able to receive directly or indirectly the profit of the structure;
- the founder is not able to dispose of profits of the structure;
- the founder is not able to influence decisions on the distribution of profits by the structure;
- the founder does not have rights to the property transferred to the structure (irrevocable transfer), i.e. he or she does not have rights to receive assets of the structure neither during the life of the structure nor as a result of liquidation of the structure.

3. An exemption from CFC rules was added for shareholders of Russian listed companies.

In this respect, Russian tax resident shall not be treated as a controlling person to a non-Russian company for CFC purposes if this control arises as a result of direct or indirect participation in one or several Russian listed companies.

4. Exemptions for CFCs which are treated as (a) active non-Russian companies, (b) active non-Russian holding companies and (c) active non-Russian sub-holding companies were added.

Profits received by such CFCs shall not be subject to Russian taxes. In this respect:

- active non-Russian company shall mean the company whose passive income does not exceed 20% of all the received income (although the definition of passive income in Russia is rather broad);
- active non-Russian holding company shall mean the company which is directly owned by the Russian controlling company for at least 75% and whose passive income, under general rule, does not exceed 5% of all the received income. Such a company shall not be registered in offshore jurisdictions;
- active non-Russian sub-holding company shall mean the company which is directly owned by non-Russian holding company for at least 75% and whose passive income, under general rule, does not exceed 5% of all the received income. Such a company shall not be registered in offshore jurisdictions.

5. An exemption was added for dividends received by a CFC from its Russian subsidiary if the controlling Russian person to this CFC shall have the actual right to these dividends.

Such dividends shall be excluded from calculation of CFC's profit subject to Russian taxes.

6. An exemption was added for individuals who choose to liquidate a non-Russian company or a non-Russian structure in order not to comply with CFC rules.

In this respect, property (except for cash) received by an individual as a result of liquidation of a non-Russian company or the structure shall be exempt from personal income tax. This property could be, for instance, shares, immovable property etc. The exemption applies subject to certain conditions provided by the law. In particular, the mentioned liquidation shall, under general rule, be finalized before January 1, 2017.

Amendments to Russian tax residency rules for legal entities

7. Reduction of conditions for treating a non-Russian company as a Russian tax resident.

The majority of the Board of Directors meetings held in Russia is no longer the condition for treating a non-Russian company as a Russian tax resident.



8. *The tax authorities may now assess Russian tax residency status to a non-Russian company registered in a double tax treaty jurisdiction.*

Before the amendment, companies registered in double tax treaty jurisdictions could be treated as Russian tax residents only voluntary (on a self-assessment basis).

Please do not hesitate to contact us should you require any further clarifications.

Kind regards,

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