FBK | Legal

The main changes in the system of taxation in Russia

Moscow | 2015

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Controlled foreign companies

From 1 January 2015 controlled foreign company ("CFC") rules came into effect in Russia.

The Russian CFC rules apply where a Russian company controls a foreign non-resident organization established in any other form than a legal entity. Such foreign organization is called controlled foreign company.

According to this rules, the controlling person is legal entity or individual with participation share in the company:

- More than 25%;
- More than 10% if overall shareholding by Russian tax residents exceeds 50%

Until 1 January 2016 company is recognized as a controlling if it's participation share in the foreign non-resident company exceeds 50%.

A party (legal entity or individual) may also be recognized as a controlling person of an organization if they do not meet the participation threshold but exercises control over that organization in his own interests.

Profit of a controlled foreign company should be included in the tax base of the controlling party in proportion corresponding to that person's participating interest in the controlled foreign company. Than such part of profit should be taxed in Russia at a rate of 13% (for individuals) or at a rate of 20% (for legal entities) if the profit of a controlled foreign company exceeds 10 million rubles (50 million rubles in 2015, 30 million rubles in 2016).

Profit of a controlled foreign company shall be exempt from taxation in case when any of the established legal conditions is met in relation to the organization.

Taxpayers who are recognized as tax residents of the Russian Federation shall notify a tax authority of their participation in foreign organizations (of the foundation of foreign structures without the formation of a legal entity) and of controlled foreign companies of which they are controlling persons through special documents.

Disclosure of information about CFCs

In 2015 there was introduced the organization's obligation to notify tax authorities about it's participation in controlled foreign companies.

The CFC notification shall include the reporting period, the name and registration number of the CFC, the last date of the reporting period of the CFC, the date of closure of financial statements and the auditor's report on the CFC (if applicable), the taxpayer's interest in the CFC (with disclosure of indirect participation), the base for recognition of the taxpayer as a controlling party, as well as the grounds for exemption of taxation of CFC profits (if applicable).

Along with their tax return, the company, being the controlling party of the CFC, must also submit the following documents:

- Financial statements of the CFC (if they are prepared)
- An audit report, in cases where a mandatory audit of the financial statements is required by law;

- Primary documents confirming the income of the CFC (in absence of financial statements).

Documents in a foreign language must be translated into Russian.

Voluntary tax residence

From 1 January 2015 a foreign company may be declared as a Russian tax resident if any of the following conditions is met:

- Most of Board of Directors meetings are held on the territory of Russia.
- Executive actions are carried out in Russia on a regular basis.
- Top management functions are carried out by key organization of officials from Russia.

To recognize a foreign company as a Russian tax resident the following criteria can also be taken into account:

- Bookkeeping or managerial accounting of the foreign company is held in Russia
- Work paper management is held in Russia
- Operational personnel management is carried out from Russia

A foreign company has the right to become a tax resident of Russia voluntarily if it exercise activities in a country which has a double tax treaty with Russia. To do this, company should submit a notice to the tax authority.

Recognition of a foreign legal entity as a Russian tax resident will lead to taxation of the company's worldwide income in Russia according to the Russian tax legislation (at corporate income tax rate of 20%).

Changes in taxation of Dividends

From 1 January 2015 tax rate in respect of income received by Russian organizations in the form of dividends from Russian and foreign organizations has been increased from 9% to 13%. At present moment this tax rate is a unified rate charged on dividends from Russian and foreign companies.

A tax rate in respect of dividends paid by foreign organizations may be reduced to 0% if all of the following conditions are met:

- company holds at least 50% of the capital of the payer conferring the right to receive dividends in an amount equal to not less than 50 % of the total amount of dividends payable by the organization; and
- the participation has been held continuously for the past 365 calendar days; and
- the state of residence of such foreign company is not included in the list approved by the Ministry of Finance of the Russian Federation of states and territories which provide preferential tax treatment and (or) do not require the disclosure and provision of information when financial operations are carried out (offshore zones).

Beneficial ownership of passive income

From 1 January 2015 the concept of "beneficial owner" of income was introduced for the application of double tax treaties. According to the introduced definition, a beneficial owner of income is a person who has the right independently to use and (or) dispose of that income; or a person in whose interests another person has the authority to dispose of the income in question.

If a foreign company - recipient of passive income from Russian sources want to benefit from the double tax treaties provisions, it should provide the Russian tax agent written confirmation of the fact that it is the beneficial owner of income prior to the payment date.

If at the moment of payment of dividends, interest, and royalties, the tax agent knows that the beneficial owner of income is not the direct recipient of income, the tax agent may apply the double tax treaty signed between Russia and the country of residence of the beneficial owner.

In case when the beneficial owner of passive income other than dividends is Russian tax resident, the tax agent should not calculate and withhold the tax, but should inform the tax authorities. Such income would be included in the tax base of such beneficial owner.

In case when the beneficial owner of dividends is Russian tax resident, the tax agent should calculate and withhold the tax. Such dividends would not be included in the tax base of such beneficial owner.

Indirect sale of Russian immovable property

Income from the sale of stocks and shares of any companies (Russian and foreign) owning the assets directly or indirectly, more than 50% composed of immovable property located in the Russian Federation become included in base for corporate income tax. Such gains are recognized as income from sources in Russia and are taxed at a rate of 20%.

Tax incentives

In 2015, incentives for the Territories of Advanced Social and Economic Growth (TASEG) were introduced. TASEG is a concept aimed at improving the development of certain regions of the Russian Federation, such as the Far East and others. To do this, the benefits were introduced in the form of reduced rates of corporate income tax, declarative process of VAT recovery for TASEG residents and reduced mineral resources extraction tax rates.

VAT

From 1 January 2015 a new obligation to file of VAT returns electronically has been introduced.

Social Security Contributions

Starting from 2015, Russian employers are required to pay contributions to the Social Fund on top of the remuneration paid to foreign employees. Nevertheless, foreign

employees are not eligible to claim any pension or other payment relating to contributions paid, except for residence permit holders.

Tax on Property of Organizations

From 1 January 2015 fixed assets included in the first and second amortization groups (with a short useful life period) in accordance with the classification of fixed assets approved by the Government of the Russian Federation, are exempted from tax on property of organizations.

Besides, movable property entered into operation after 1 January 2013 is excluded from the property tax base. But movable property entered into operation as a result of reorganization, liquidation of the legal entity or purchasing of property by affiliated parties is taxed by tax on property of organizations.

Tax monitoring

From 1 January 2015, the new institute of tax control in Russia - Tax monitoring began to operate. The subject-matter of tax monitoring is the correct calculation, full and timely payment (remittance) of taxes and levies. The tax authorities may not conduct tax audit for the period for which the tax monitoring is carried out.

The organization has the right to use tax monitoring if all of the following conditions are met:

- the aggregate amount of value added tax, excise duties, tax on profit of organizations and tax on the extraction of commercial minerals payable to the budget for the calendar year preceding the calendar year in which the application for tax monitoring to be conducted is submitted is not less than 300 million rubles; and
- the aggregate amount of income received according to the annual accounting statements for the same period is not less than 3 billion rubles; and
- the aggregate value of assets according to the accounting (financial) statements as at 31 December of the calendar year preceding the calendar year in which the application for tax monitoring to be conducted is submitted is not less than 3 billion rubles.

The period for which tax monitoring is conducted shall be the calendar year following the year in which the organization submitted the application for tax monitoring to be conducted to the tax authority.

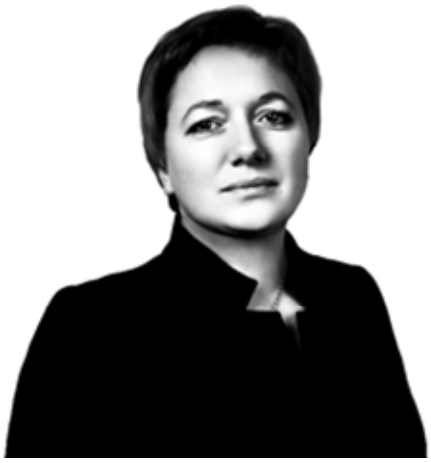
A tax authority have the right to request a company of presenting necessary documents and explanations.

If during the tax monitoring tax authority finds evidence that taxes and levies have been incorrectly calculated or have not been paid in full or on time, the tax authority shall be obliged to prepare a reasoned opinion. An organization shall notify a tax authority which has prepared a reasoned opinion of its agreement with that reasoned opinion within one month from the day on which it is received.

If a taxpayer disagrees with a reasoned opinion, he shall present disagreements to the tax authority which prepared that reasoned opinion.

The federal executive body in charge of control and supervision in the area of taxes and levies shall initiate the conduct of a mutual agreement procedure after receiving disagreements and materials presented by a tax authority. Upon completion of the mutual agreement procedure, the federal executive body shall notify the organization of the modification of the reasoned opinion or of the upholding of the reasoned opinion.

Contacts



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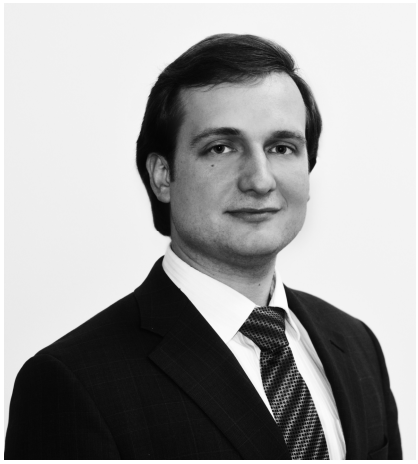

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