



RUSSIA'S FEDERAL TAX SERVICE HAS A NEW BLACKLIST

For the attention of: Russian entities and individuals that work with foreign legal entities, as well as trusts and other unincorporated structures.

Pepeliaev Group advises that a draft has appeared of a new blacklist of offshore jurisdictions.

The Russian Federal Tax Service has published a draft order approving a list of states and territories which do not ensure that information is exchanged with Russia for tax purposes¹.

The draft of the new blacklist contains a significantly greater number of states and territories than does the current list approved by the Russian Finance Ministry for a 0% rate to be applied to dividends². Included in the new list, most notably, are the UK, Switzerland, Austria, Estonia, Israel and Malta.

Companies from countries that are on this blacklist will be unable to apply certain types of exemptions for the profit of controlled foreign companies (CFCs) from Russian tax under³ in effect since the start of 2015:

- the exception for 'high-tax' CFCs, which have an effective tax rate in their country of residence that exceeds 3/4 of the average weighted rate of Russian profit tax; and;
- the exceptions for CFCs that are banks or insurers, or those involved in the circulation of bonds.



However, other exceptions (in particular, for active companies) may be applied within the framework of the current law, irrespective of what is included in this blacklist. Active holding and sub-holding companies fall under the blacklist referred to above that was previously approved by the Finance Ministry.

It is presumed that the new list will come into force from the start of 2016.

One of the problematic issues of applying another recent legislative act, on the so-called offshore amnesty, is linked to the appearance of the new blacklist⁴. This law permits an interpretation under which, for the "amnesty" to apply, it is necessary to return to Russia declared items that are located, on the date on which the declaration is submitted, "in a state (territory) which does not ensure that information is exchanged for tax purposes" with Russia.

The draft blacklist proposes the list of such states. However, by the time the draft is adopted and comes into force (the start of 2016), the offshore amnesty period will already have finished.

It remains unclear whether, and, if so, how, the above provision of the law on the offshore amnesty should be applied.

¹ See: <http://regulation.gov.ru/projects#npa=41221>

² The Finance Ministry's Order No. 108n dated 13 November 2007.

³ Article 25.13.1 of the Russian Tax Code.

⁴ Federal Law No. 140-FZ dated 8 June 2015 "On individuals voluntarily declaring assets and accounts (deposits) in banks and on amending particular items of the legislation of the Russian Federation".

What to think about and what to do

In the coming months, it is expected that amendments will be made to the CFC rules and to the law on the offshore amnesty, owing to ambiguity in their wording. The Finance Ministry published a refined draft of the amendments on 29 October 2015⁵.

We believe that it is worth taking final decisions regarding CFCs and the offshore amnesty only after such amendments and clarifications have been published. Currently, we recommend that the necessary preparatory steps be taken, to the extent that this has not already been done. Such steps include, among others, making an inventory of assets, drafting documents, and assessing risks.

Help from your adviser

Pepeliaev Group's lawyers are ready to assist both entities and individuals with the practical application of the tax repatriation and offshore amnesty rules. This may include assessing the implications and risks as well as drafting the necessary documents.

We involve our partners from the Taxand and Terralex international networks when we prepare recommendations relating to the use of foreign jurisdictions, complying with strict confidentiality requirements. These networks bring together independent consulting companies of the highest professional level from across the globe.

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⁵ See: <http://regulation.gov.ru/projects#npa=21838>