TRIDENT TRUST

Memo

Russian "Deoffshorisation" Law – Action Required Now

September 2017

Background

Major changes to the Russian tax code that have significant impact on Russian tax residents with an ownership interest in or control of entities outside of Russia became effective on 1 January 2015. Affected persons that have not so far taken action in relation to these changes should do so at the earliest opportunity.

The changes were introduced through the Federal Law No 376-FZ dated 24 November 2014 "Concerning the Introduction of Amendments to Parts One and Two of the Tax Code of the Russian Federation (Regarding the Taxation of the Profit of Controlled Foreign Companies and the Income of Foreign Organizations)", which is often called Russia's "Deoffshorization" Law. Detailed information on the Law is available here in our client memo on it at the time of its introduction.

Since the Law was introduced, Russia has also committed to adopting the Common Reporting Standard ("CRS"). Under CRS, financial information that is collected by one country about residents of another country will be shared automatically on an annual basis between countries that have signed up to CRS. Over 90 jurisdictions have endorsed CRS.

Once Russia formally adopts CRS and enters into the necessary information sharing agreements with other signatories, it will automatically receive information on Russian tax residents if they maintain financial accounts in those CRS jurisdictions. Our client memo on CRS, available here, provides a detailed overview of CRS.

The Law - Key Points

- Russian tax residents with a material ownership interest in or control of a foreign entity must disclose their participation in this entity to the Russian tax authorities and pay the required tax in Russia on profits from this entity. Such entities are defined as Controlled Foreign Companies ("CFCs").
- Non-disclosure of any CFC participation and/or non-payment of related tax obligations will result in significant fines. Non-compliance with the CFC rules becomes a criminal offence from 1 January 2018; criminal liability for non-disclosure and/or non-payment may be waived under certain circumstances until 31 December 2017.The definition of Controlled Foreign Companies is broad and includes corporates entities and certain unincorporated structures such as trusts and partnerships outside of Russia, although there are a number of exemptions.

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"A foreign company managed from Russia can be recognized as Russian tax resident, with its worldwide income subject to tax in Russia."

- A Russian tax resident will be deemed to be controlling the foreign company if their participation interest is 25% or more (or 10% or more if the participation is grouped with that of other Russian tax residents and the accumulated total of the participation of all the Russian tax residents exceeds 50% of the holding of the company).
- Even if they do not have a participatory interest, a Russian tax resident can be deemed to be controlling a foreign company if they exert a determining influence on decisions made by the person who manages the structure's assets regarding the distribution of net profits to participants.
- A foreign company managed from Russia can be recognized as Russian tax resident, with its worldwide income subject to tax in Russia. The three primary tests for judging if a company is managed in Russia are:
  - Meetings of the board of directors (or other executive management body) are predominantly held in Russia (over 50% of meetings in a year).
  - High-level executive management is predominantly performed in Russia.
  - The Chief (Executive) officers (persons authorized to perform and responsible for planning, management and control over the entity's activities) operate predominantly in Russia.

Additional tests are applied to the company if these primary tests do not provide a conclusive answer.

Required Action

- Russian tax residents who have not already notified the Russian tax authorities of their participation in or control of a foreign entity must immediately review any structure in which they have an interest or assets (such as a foreign trust, foundation or company) to analyse if the structure is within the scope of the CFC legislation and also if they have any personal tax liability in Russia resulting from the structure.
- This review and analysis should be conducted by a qualified professional legal and/or tax advisor.
- The conclusions of the review should be implemented as quickly as possible.

Key Deadlines

- Non-compliance with the CFC rules will become a criminal offence from 1 January 2018.
- The deadline for notifying the Russian tax authorities of participation in a CFC is 20 March of the year following the tax period in which a share profit of a controlling person of a CFC arises.
- By April 30 2017, for the first time, Russian tax residents must file personal income tax returns that include any profits of a CFC.

How We Can Help

Trident Trust is able to:

- Make introductions to appropriate legal and tax advisors
- Assist individuals who wish to relocate to another tax jurisdiction
- Assist with the implementation of structures that are deemed to be compliant with the new rules, as determined by specific legal and tax advice

Please contact your usual Trident Trust representative to discuss how we can help.

Offices

The Americas/Caribbean

Bahamas
Trident Corporate Services (Bahamas) Ltd
T: +1 242 322 6154
bahamas@tridenttrust.com

Barbados
Trident Corporate Services (Barbados) Ltd
T: +1 246 621 0760
barbados@tridenttrust.com

British Virgin Islands
Trident Trust Company (BVI) Ltd
T: +1 284 494 2434
bvi@tridenttrust.com

Cayman Islands
Trident Trust Company (Cayman) Ltd
T: +1 345 949 0880
cayman@tridenttrust.com

Nevis
Morning Star Holdings Ltd
T: +1 869 469 1817
nevis@tridenttrust.com

Meridian Trust Company Ltd
T: +1 869 469 1333
nevis@tridenttrust.com

Panama
Trident Trust (Panama) S.A.
T: +507 302 7494
panama@tridenttrust.com

United States

Atlanta
Trident Corporate Services, Inc
T: +1 404 233 5275
usa@tridenttrust.com

Miami
Trident Fund Services
T: +1 305 405 9006
miami@tridenttrust.com

New York
Trident Corporate Services, Inc
T: +1 212 840 8280
nyc@tridenttrust.com

Sioux Falls
Trident Trust Company (South Dakota) Inc
T: +1 605 679 4355
sd@tridenttrust.com

US Virgin Islands
Trident Trust Company (VI) Ltd
T: +1 340 774 7322
usvi@tridenttrust.com

Asia

Hong Kong
Trident Corporate Services (Asia) Ltd & Trident Trust Company (HK) Ltd
T: +852 2805 2000
hongkong@tridenttrust.com

New Zealand
Trident Trust Company (NZ) Ltd
T: +64 9 300 6067
nz@tridenttrust.com

Singapore
Trident Corporate Services (Singapore) Pte Ltd & Trident Trust Company (Singapore) Pte Ltd
T: +65 6653 1800
singapore@tridenttrust.com

EMEA

Cyprus
Trident Trust Company (Cyprus) Ltd
T: +357 258 20 650
cyprus@tridenttrust.com

Trident Fiduciaries (Middle East) Ltd
T: +357 253 53 520
fiduciariesme@tridenttrust.com

Dubai
Trident Trust Company (UAE) Ltd DMCC Branch
T: +971 4 423 9988
dubai@tridenttrust.com

Guernsey
Trident Trust Company (Guernsey) Ltd
T: +44 1481 727571
guernsey@tridenttrust.com

Isle of Man
Trident Trust Company (IOM) Ltd
T: +44 1624 646700
iom@tridenttrust.com

Jersey
Trident Trust Company Ltd
T: +44 1534 733401
jersey@tridenttrust.com

Luxembourg
Trident Trust Company (Luxembourg) S.A.
T: +352 26 30 28 48
luxembourg@tridenttrust.com

Malta
Trident Corporate Services (Malta) Limited & Trident Trust Company (Malta) Ltd
T: +356 21 434 525
malta@tridenttrust.com

Mauritius
Trident Trust Company (Mauritius) Ltd
T: +230 210 9770
mauritius@tridenttrust.com

Seychelles
Trident Trust Company (Seychelles) Ltd
T: +248 4 422 000
seychelles@tridenttrust.com

Switzerland
Trident Corporate Services AG
T: +41 44 396 1080
switzerland@tridenttrust.com

United Kingdom
Trident Trust Company (UK) Ltd
T: +44 20 7935 1503
uk@tridenttrust.com

Trident Company Services (UK) Ltd
T: +44 20 7487 0460
corpservices@tridenttrust.com