

# Russian "deoffshorisation law": bring the boys back home!

On 18 November 2014 the State Duma (the lower chamber of Russian Parliament) approved a set of amendments to the Russian Tax Code for the purpose of implementing what has commonly been described as Russia's "deoffshorisation law" ("Deoffshorisation Law"). In order for the Deoffshorisation Law to take effect from 1 January 2015, as is currently intended, it will have to be approved by the Federation Council (the upper chamber of the Russian Parliament), signed into law by the President and officially published on or before 1 December 2014. It is widely expected that this will occur and that the Deoffshorisation Law will become law as of 1 January 2015, notwithstanding the fact that it is still a work in progress and the fact that further amendments will likely be required during the course of 2015 in order to clarify the meaning and scope of various provisions.

## What is "Deoffshorisation"?

"Deoffshorisation" denotes the Russian Government's campaign to bring Russian business back to Russia. Historically, the vast majority of Russian assets have been held through, and bought and sold using, various off-shore jurisdictions and outside the ambit of the Russian legal and tax systems. While the Russian Government's deoffshorisation initiative is not confined solely to tax and the Deoffshorisation Law, it is certainly core to this initiative as, among other things, it purports to enable the Russian Government to tax offshore assets of Russian residents.

## What will be the impact of the Deoffshorisation Law?

The Deoffshorisation Law introduces four principal changes to Russian tax landscape from 1 January 2015:

- A concept of "*beneficial ownership*" will be introduced for the purpose of curtailing the abusive use of conduit structures and back-to-back arrangements aimed at circumventing Russian withholding tax by channelling income from Russia through an intermediary structure located in a jurisdiction that has a double tax treaty with Russia. The Deoffshorisation Law will make it much more difficult for SPVs holding Russian financial assets or shares in Russian companies to claim benefits under the relevant double tax treaties; meaning that payments from Russian residents to such SPVs that are currently exempt from Russian withholding tax or that are taxed at favourable treaty rates, may cease to be eligible for treaty benefits.
- A concept of "*controlled foreign company*" ("**CFC**") will be introduced pursuant to which a Russian resident (individual or corporate) who holds, directly or indirectly, a significant stake in a foreign company, or "arrangement that does not have legal personality" (which is a concept intended to capture various types of unincorporated trusts and funds) will be obliged to pay taxes in Russia on any undistributed profits of such foreign company or "arrangement". For this purpose, a 'significant stake' means (i) in the case of individual holdings, more than 50% until 31

December 2015 and, thereafter, more than 25%, and (ii) in circumstances where unrelated Russian residents hold collectively more than 50% of a foreign company, more than 10%). The concept of CFC is quite broad, and the number of carve-outs is rather limited (e.g. a company will not be regarded a CFC if it is a foreign bank, or a company in a high-tax jurisdiction that exchanges tax-related information with Russia, or a company implementing a qualifying oil and gas project in Russia). In addition, Russian residents will be obliged to notify Russian tax authorities of any shareholdings in foreign companies in excess of 10% of the foreign company's share capital.

- The concept of "*tax residency*" will be extended to foreign organisations such that, if it is determined that a foreign legal entity is effectively managed and controlled from Russia, it will

become subject to Russian corporate income tax as if it were a Russian legal entity.

- The concept of "*real-estate rich*" companies will be extended to cover foreign entities. While currently Russian withholding tax may apply to capital gains realised upon the sale of Russian companies that have significant assets in real-estate, with effect from 1 January 2015 Russian capital gains tax will also apply to the disposal of shares in foreign companies if more than half of the value of such shares is attributed to real-estate in Russia. It is also worth noting, that starting from 2007, Russia has been working with other jurisdictions to amend its double tax treaties and acquire the right to tax such disposals and prevent circumvention of Russian taxation simply by using two-tier offshore structures. For example, relevant amendments to the Russian-Cypriot double tax treaty will come into effect in 2017.

## Conclusion

The Deoffshorisation Law will inevitably have a significant impact both on holding structures and the structuring of transactions across a wide range of sectors. If you wish to discuss the impact of this development on your business, please feel free to contact any of the authors of this briefing or your usual Clifford Chance contact.

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