RUSSIAN CURRENCY CONTROL: MORE LIBERALISATION BUT ON A RECIPROCAL BASIS

Russia has broadened the permission for crediting individual and corporate accounts of its currency residents with foreign banks located in Eurasian Economic Union (the "**EAEU**") members and jurisdictions exchanging information under the OECD's Common Reporting Standard ("**CRS**") with retroactive effect, while "penalising" its own residents for having accounts in banks located in, and borrowing from residents of, non-exchanging states.

Key issues

- References to OECD/FATF member states are replaced with EAEU and CRS-exchanging jurisdictions
- The number of jurisdictions where individual accounts' crediting restrictions are lifted is doubled with retroactive effect
- More opportunities for crediting foreign accounts with non-repatriating currency in connection with long-term loans
- Position of residents with accounts in / borrowing out of OECD/FATF jurisdictions significantly worsens

BACKGROUND

The number of transactions where it is permitted for Russian currency residents[1] to directly credit their foreign bank accounts (i.e. without the funds initially being credited to their Russian bank accounts) has been slowly increasing during the past five years,[2] with some more to be added on 1 January 2020.

Many of such carve-outs, from what is generally a very restrictive regime, including the exemptions discussed in our briefing of September this year, require that foreign bank accounts are located in OECD or FATF member states. This is will no longer be the case.

In this briefing we discuss some of the most recent amendments[3] that both change this standard pattern and promise radical liberalisation of Russian foreign account rules with retroactive effect.

WHAT IS CHANGING?

General

Mention of OECD/FATF member states will be replaced with references to EAEU member states[4] and jurisdictions that automatically exchange financial information with Russia under the CRS[5] or any other automatic exchange of

[1] Companies organised under Russian law, individuals holding Russian passports, or foreign nationals living in Russia under residency permits
[2] Please see our briefing of August, 2014 "Russian Currency Control: More Freedom Under State Control"
[3] On 25 November 2019, a draft law introducing further amendments to Russian currency control rules has been approved by the upper chamber of the Russian parliament and is expected to be signed by the Russian President into the law within next several days
[4] The EAEU currently consists of Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia
[5] According to the 2014 Multilateral Competent Authority Agreement in accordance with the Automatic Exchange of Financial Information in Tax Matters

information agreement ("**CRS-exchanging jurisdictions**") throughout the list of permitted transactions and for so-called "currency repatriation" rules.

The above almost doubles the number of foreign bank account locations where restrictions on directly crediting funds received from currency non-residents are fully lifted for Russian resident individuals. The list of jurisdictions exchanged by the CRS is to be maintained by the Russian Federal Tax Service and published on its official website. According to the currently available draft of the list, 88 countries and territories are mentioned, including Cyprus, Malta, Monaco, Lichtenstein, Bermuda, Cayman Islands and other non-OECD/FATF countries and territories.

Russian companies will also benefit from the increased number of lender and bank account locations where it is possible to credit funds received under long-term (two years or more) loan agreements or avoid onerous currency repatriation requirements.

While increasing the number of qualifying jurisdictions is good news, the list of such jurisdictions will be wholly controlled by the Russian Federal Tax Service, rather than based on membership of an international organisation or intergovernmental body. This makes the list of jurisdictions potentially prone to politically charged variations.

Russian currency residents, their foreign account banks and lenders are advised to begin closely monitoring the position of their respective jurisdictions and create a contractual mechanism enabling continuing compliance with Russian currency rules in case the jurisdiction is taken off of the list.

Russian resident individuals:

Lifting restrictions for accounts in "good" countries…

Once the new law is published, all restrictions on crediting the bank accounts of individuals who are Russian currency residents will be lifted when:

- the funds are received from a company or individual that is a non-resident for Russian currency control purposes[6]; and
- the account is with a foreign bank located in a jurisdiction that is an EAEU member or exchanges information with Russia in accordance with the CRS or any other international arrangement or agreement on the automatic exchange of financial information.

This means that Russian resident individuals and their foreign banks would be free to credit funds irrespective of the type of transaction (i.e. without having to refer to the list in the Russian currency law) as long as the accounts are located in a CRS-exchanging jurisdiction.

The above general permission covers funds that were credited after 1 January 2018. The retroactive effect of the amendments is, effectively, an amnesty from potentially draconian fines of up to 100% of the value of payment for those individuals who failed to comply with the restrictions in the years 2018 and 2019.

While the retroactive effect is, obviously, good news, there remains a residual question: whether the existing lists of CRS-exchanging jurisdictions may be used for currency control purposes? The existing lists were issued for the purposes of tax rather than currency legislation. Moreover, due to the specifics of reporting under the CRS that imply exchanging information with respect to previous years, it is also not entirely clear how should they be used with respect to future years.

… and "penalising" residents, who made the "wrong" choice

Direct crediting of funds with foreign bank accounts located in OECD/FATF, but non CRS-exchanging jurisdictions that are currently permitted will become prohibited.[7] This prohibition will, *inter alia*, include receipt of funds under long-term loan agreements, proceeds from the sale of listed foreign securities, coupon payments and dividends arising on foreign securities, income from asset management, rental payments, and proceeds from sales of immovable property.

[6] Many of transactions between currency residents which involve foreign currency remain prohibited
[7] There still be no restrictions on crediting accounts of Russian currency resident individuals spending more than 183 days outside Russia in a given calendar year.

The most notable non CRS-exchanging jurisdictions where accounts of Russian resident individuals are likely to be affected include the UK, the US and Turkey.

Russian resident companies

non-OECD/FATF lenders are welcome…

The list of credit transactions permitted for Russian currency resident companies is quite short. One of the crucial permitted transactions, however, is a possibility to credit the amount of principal received under a long-term (over two years) loan agreement with a resident of the OECD/FATF jurisdictions with an OECD/FATF-located foreign bank account.

There is also a carve-out from the requirement to "repatriate" (ensuring receipt to a bank account in Russia) revenues from foreign trade associated with the above exemption. "Repatriation" is not required when revenues from foreign trade are applied towards performing a Russian resident's obligations under the long-term loan agreement mentioned above and concluded with residents of OECD/FATF jurisdictions.

With the replacement of OECD/FATF members in both of the above carve-outs with EAEU members and CRS-exchanging jurisdictions, Russian resident companies will have more flexibility in choosing parties for long-term loan agreements and locations for their accounts to be used to service such loans. In particular, it may become easier to receive principal amounts from*, inter alia*, related parties that are residents in non-OECD/FATF CRS-exchanging "low tax" or "offshore" jurisdictions.

… non CRS-exchanging are not.

Upon the new rules coming into force Russian companies will lose their rights to use permitted transactions and "repatriation" carve-outs when borrowing from residents of OECD/FATF non CRS-exchanging jurisdictions, such as the UK or the US.

We note that no grandfathering is provided by amendments to the repatriation carve-out. This means that the carve-out will no longer be available for servicing historical borrowings of Russian resident companies, and it may become illegal not to repatriate part of the foreign trade revenues that are currently used to service long-term loans provided by residents of OECD/FATF non CRS-exchanging jurisdictions.

CONTACTS

Alexander Anichkin
Partner

T +7 495 258 5089
E alexander.anichkin
@cliffordchance.com

Dmitrii Tolkachev
Senior Associate

T +44 20 7006 5553
E Dmitrii.tolkachev
@cliffordchance.com

www.cliffordchance.com

Clifford Chance, Ul. Gasheka 6, 125047
Moscow, Russia

Clifford Chance CIS Limited

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