

## Legal Alert

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## Automatic exchange of financial information and disclosure of beneficial owners of Russian entities

On May 12, 2016, Russia signed the Multilateral Agreement on the Automatic Exchange of Information (the "AEol") based on the OECD Common Reporting Standard (the "CRS"). The CRS will allow the Russian tax authorities to automatically obtain information on foreign bank accounts held directly or indirectly (via shell companies) by individuals - Russian tax residents. More than 100 states including offshore jurisdictions have joined or committed to join the AEol and participate in automatic exchange of financial information. Though AEol is based on reciprocity and additional bilateral treaties with particular foreign states are required, Russia is likely to start receiving respective financial information in 2018-2019.

Disclosure of the ultimate beneficiaries in Russia may occur even before the CRS. In June 2016 the Russian Parliament passed the Federal Law "On Amendments to Federal Law On Combating Money Laundering and the Financing of Terrorism and the Russian Code of Administrative Offences" (the "Amendments") introducing a new requirement for all Russian companies to annually collect and keep information on their ultimate beneficiaries.

### How the CRS Works

- In accordance with the CRS, Financial Institutions (including banks, custodians, brokers, certain insurance companies, certain collective investment vehicles and companies holding financial assets) in participating jurisdictions should annually report on (1) Financial Accounts of foreign individual holders; and (2) on Financial Accounts held via passive companies/structures (i.e., by ultimate beneficiaries) to national tax authorities of such individuals/ultimate beneficiaries ("Reportable Persons").
- Financial Accounts are very broadly defined and include not only bank and broker accounts, but also custodial accounts and financial assets such as equity and debt interest.
- The CRS reporting is not limited to licensed banks and brokers. Private companies, trusts and foundations holding financial assets would need to consider if they can be recognized as Financial Institutions subject to own CRS reporting obligations.
- Financial Institutions may need to perform additional due diligence to review and identify the Reportable Persons - foreign tax residents.
- The information collected by foreign Financial Institutions (including both new and pre-existing Financial Accounts) with respect to Russian Reportable Persons will be accessible to Russian tax

authorities without any official request and regardless of any tax audit or other procedures.

## New Russian Disclosure Rule

Russian Amendments require all Russian companies to start identifying their ultimate beneficiaries - individuals ultimately directly or indirectly owning more than 25% in the capital of an entity or having an opportunity to control its operations. The Law becomes effective on December 21, 2016. The collected information is not subject to automatic reporting to any Russian authority, but monetary penalties up to 500,000 rubles (approximately USD 7,800) apply for failing to provide this information at request to the Federal Financial Monitoring Service, tax authorities and other authorized state bodies.

## Possible Implications for Taxpayers

Russian state authorities expect to receive the first reports on information on foreign Financial Accounts of Russian Reportable Persons and their passive companies/structures in 2018-2019. Despite the fact that formally Russia still needs to sign bilateral treaties with particular AEOI-partner states, the chances are high that significant number of foreign states (including Switzerland, Austria, Germany, etc.) would agree to provide the required financial information to the Russian tax authorities. Although the Amendments introduce new Russian disclosure requirement for anti-money laundering purposes, this information may be requested on tax audits and may be analyzed and interpreted by the Russian tax authorities for the purposes of tax assessments.

International holding and financing structures become significantly more transparent. Foreign banks are under increased pressure and are asking customers to confirm compliance with applicable regulatory and tax rules or to leave. Without due care and planning some sensitive or even erroneous information may be shared with the Russian tax authorities creating regulatory and tax risks, including in the context of the Russian controlled foreign companies rules. Not only careful tax planning, but also information reporting planning is required to mitigate tax risks.

## Actions to Consider

Russian residents who could be considered as Reportable Persons/ultimate beneficiaries are strongly recommended to:

- ascertain what Financial Accounts (bank and other accounts, equity and debt interest in foreign companies), holding and financing structures to determine all Financial Institutions could be subject to the CRS reporting;
- check with the banks and other Financial Institutions on what information is included in their files and may be disclosed in Russia, consider making changes if erroneous information may be reported and may create tax or currency control issues;
- review risks of disclosure of information on Financial Accounts/ultimate beneficiaries or engage an experienced international tax counsel for such limited due diligence;

- consider voluntary reporting of "undisclosed" accounts/shares in companies and regularizing tax position to avoid penalties and other liability;
- consider restructuring opportunities (including choosing appropriate reporting Financial Institutions in the structure) to better control the information that may be disclosed under the CRS/new Russian rules, and other mitigation strategies to minimize regulatory and tax risks that may arise due to new reporting;
- prepare appropriate explanations and supporting documentation e.g., contracts and legal opinions to avoid potential misinterpretation of the disclosed information by Russian state authorities and courts.

We would be happy to consult on information disclosure and on restructuring opportunities.

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