

TAX NEWS

The Federal Law dd. 24.11.2014 № 376-Φ3 "Changes in Tax Code Law with respect to taxation of profit of Controlled Foreign Companies and income of foreign entities" has been approved by the Russian State Duma on 18th of November 2014 and in force as from 1st January 2015.

➤ **The rules for the Controlled Foreign Companies (CFC):**

The Controlled Foreign Company (CFC) rules introduce Russian taxation of profits of foreign companies and non-corporate structures (including trusts) controlled by Russian tax residents (controlling parties).

In particular, a controlling party of a CFC shall mean an individual or legal entity with a direct or indirect interest in the CFC (for individuals — jointly with spouses and minor children):

- over 25%;
- over 10%, if total participatory interest of all Russian tax residents in the CFC is over 50%.

2015 will be a transition period, during which a higher participatory share threshold of 50% will be applied.

Profits of certain CFCs will not be taxed in Russia, while the obligation to provide respective notification will remain in place. For example: a CFC is permanently domiciled in a "good" jurisdiction (treaty country except for those countries that do not exchange tax information with Russia) and EITHER has an effective tax rate of at least 3/4 of average weighted Russian tax rate OR the CFC's income from passive operations amount to not more than 20% of its income.

CFC income will be subject to a **20% rate** if the CFC is controlled by a legal entity and a rate of **13%** if it is controlled by an individual. The profit amount can be reduced by the dividends paid out of the CFC's profits (certain specific aspects should be taken into account).

Russian tax will be imposed only on the profits of CFCs determined in periods **starting in 2015**. Such profit will be **declared for the first time by Russian legal entities on 28 March 2017** in their corporate income tax returns for 2016 (individuals, respectively, will declare CFC profits on **30 April 2017**).

CFC profit is taxed in Russia if it exceeds the threshold of **RUB 10 million** (other thresholds will apply in the transition period: **in 2015 – RUB 50 million; in 2016 – RUB 30 million**).

Profits of a CFC taxed in Russia shall be determined on the basis of financial statements prepared in accordance with its personal law (on the condition that said financial statements are subject to mandatory audit under the CFC's personal law and that the company is permanently domiciled in a treaty country) or under Russian Tax Code (Chapter 25) rules in other cases.

A **fine** for underpayment of CFC tax is set at **20%** of the underpaid tax amount, but not less than RUB 100,000. Fines shall not be charged in respect of CFC profits of 2015, 2016, 2017.

The law sets special rules for accounting for CFC losses, and also allows for credit of tax paid by CFC under foreign or Russian laws (including tax paid by permanent establishment of CFC in Russia).

Moreover, the law permits to deduct profits of the CFC already accounted for by other Russian controlling parties in case of indirect participation in CFC (with regard to participatory interest).

➤ **Administrative actions:**

Taxpayers will have to file several types of notifications to the tax authorities, including:

- **notification on participation in foreign companies** (if direct or indirect participatory interest is above **10%**), as well as on incorporation of foreign non-corporate structures or on control over such structures (certain specific aspects should be taken into account here). The fine for failure to provide this information or provision of misstated information is **RUB 50,000**.
- **Notification on CFC** (the fine for a failure to provide information or provision of misstated information is **RUB 100,000** for each CFC).

➤ **Tax residency rules:**

Tax residency of individuals will continue to depend on the number of days of their stay in Russia (more or less than 183 days).