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## Tax amnesty – your second chance

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### *In brief*

A set of three bills on Tax Amnesty has passed their third reading in the State Duma.<sup>1</sup> These bills provide for an extension of the amnesty deadline, i.e. they introduce the so-called “second stage” of the amnesty programme.

It is quite possible that the laws will come into effect before 1 March 2018.

The first stage of the amnesty ended on 30 June 2016 but it did not meet lawmakers’ expectations. The number of people who filed respective declarations did not exceed 7,000. The second stage of the capital amnesty will take place **from 1 March 2018 and continue until 28 February 2019**. It is possible that the second wave of Russian citizens declaring their foreign assets will be larger, especially in light of the upcoming introduction of the Common Reporting Standards (CRS) to ensure the automated exchange of inter-country information.

The guarantees generally remain the same, but the government is now trying to extend the range of assets that fall under the amnesty regulations.

The amnesty as before will allow Russian citizens to inform the authorities of their foreign assets. In exchange, the authorities will not ask about the source of the money used to buy the assets declared and will not impose any **tax, administrative or criminal liability** on the declarant. The second stage of the amnesty will also be “free of charge”, meaning no taxes will be levied on the declared assets except for CIT on income of CFCs. At the same time, future income from the use of such declared assets will be timely accounted for and taxed in Russia. As before, declarants will not have to repatriate their assets to Russia.

Importantly, participants in the first stage of the amnesty can also take part in the second stage, provided that a declarant files only one respective declaration for each stage. If several declarations are filed during one stage, the earliest one will be accepted and the rest will be rejected.

There is one positive change in the second stage in comparison to the first: declarants can specify in their special declaration not only accounts and deposits with foreign banks that are open at the date of the filing, but also closed accounts (they were not mentioned by the first amnesty law).

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<sup>1</sup> Proposals were made to amend Federal Law No. 140-FZ of 8 June 2015 “On voluntary declaring by physical persons of assets and accounts (deposits) in banks and on modification of separate legal acts of the Russian Federation”, as well as a number of RTC articles and Article 76.1 of the Russian Criminal Code.

<http://sozd.parlament.gov.ru/bill/377595-7>

<http://sozd.parlament.gov.ru/bill/377596-7>

<http://sozd.parlament.gov.ru/bill/377597-7>

## ***In detail***

### **❖ Proposed amendments to the Law on Amnesty and to the Criminal Code**

#### *Periods subject to amnesty*

Participants in the second stage of amnesty will have guarantees pertaining to any acts committed before 1 January 2018. Declarations can be filed with tax authorities from 1 March 2018 until 28 February 2019.

As during the first stage, the period from 1 January 2018 to the declaration filing date will not be covered by guarantees.

#### *Taking part in both stages of capital amnesty*

The bills expressly states that filing a declaration during the first stage of capital amnesty does not prevent the declarant from filing another declaration during the second stage.

#### *Filing procedure*

Declarants may now choose any tax office or federal executive body authorised to control and monitor taxes and levies to file their declarations. This significantly simplifies the filing process, especially for individuals who do not currently live at their place of residential registration.

In addition, another positive shift is the possibility to file notifications on opening/closing foreign accounts or changing account details, as well as CFC notifications and notices of participation in foreign entities together with special declarations. Such notices and notifications now may be filed with any tax office or federal executive body upon the declarant's discretion. That said, there will be no amnesty covering tax liabilities on CFC profits. Another open issue is the possibility of and procedure for extending the amnesty to accounts of which tax authorities were earlier informed.

#### *Obtaining clarifications*

The bills mention separately that the Ministry of Finance is entitled to clarify the procedure for filling special declarations.

#### *Guarantees*

The scope of guarantees will not change. However, for the sense of confidence it is clearly stated now that provision of guarantees will not depend on whether the declarant specified how he acquired the assets declared.

#### *Criminal liability*

The amendments to the Article 76.1 of the Russian Criminal Code imply a relief for periods before 1 January 2015 or 1 January 2018 for crimes mentioned in Article 193,<sup>2</sup> Parts 1 and 2 of Article 194<sup>3</sup> and Articles 198,<sup>4</sup> 199,<sup>5</sup> 199.1<sup>6</sup> and 199.2<sup>7</sup> of the Russian Criminal Code, provided that the individual is specified in the amnesty declaration.

Other economic crimes mentioned in the Russian Criminal Code (e.g. "Fraud") will not be covered by the amnesty.

#### *Administrative liability*

The declarant or a person listed in a special declaration is relieved from administrative liability under Articles

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<sup>2</sup> Evasion of obligation to repatriate funds in foreign or Russian currency.

<sup>3</sup> Evasion of customs payments charged to companies or individuals, constituting large or particularly large sums or committed by a group of people in collusion.

<sup>4</sup> Evasion of tax payments and/or levies charged to individuals.

<sup>5</sup> Evasion of tax payments and/or levies charged to organisations.

<sup>6</sup> Failure to perform tax agent duties.

<sup>7</sup> Concealment of a company or sole proprietor's funds or property to avoid taxes and/or levies.

15.1, 15.3-15.6, 15.11 and 15.25<sup>8</sup> of the Code of Administrative Offences.

### *Currency law violations*

The bills introduce relief from administrative liability for violations related to the unlawful use of foreign accounts listed in the amnesty declarations.

Positive changes include the possibility of extending the amnesty to accounts that were already closed at the date of the filing of the special declaration.

### ❖ **Proposed amendments to the Russian Tax Code (RTC)**

It is proposed:

- ✓ To provide tax exemption on assets declared during the second stage of amnesty except for taxes payable on the profits and/or property of CFCs declared;
- ✓ To determine that when declaring participation in a foreign company or filing CFC notices during the second stage of the amnesty, such notices will not be considered filed in violation of the established deadlines;
- ✓ To provide Personal Income Tax (PIT) exemptions on income received upon the liquidation of a CFC in case the liquidation was completed before 1 March 2019.<sup>9</sup> Exemptions will cover both cash and property received after 1 January 2016, which means that the controlling parties that liquidated their CFCs in 2016 and 2017, received liquidation payments and paid the respective taxes will now be able to get the taxes back;
- ✓ To establish the procedure for determining expenses when calculating PIT upon a declarant's sale of property and property rights received earlier from a nominee holder. This procedure will be similar to the procedure for determining expenses in case of the tax-free receipt of property from a liquidated CFC (the expenses will include the lesser of the two values: either the confirmed book cost or market value at the date of the receipt)
- ✓ To extend the period during which a CFC may not be considered a Russian tax resident<sup>10</sup> until 1 March 2019
- ✓ To extend the period during which the income and expenses of a liquidated CFC will not include income and expenses from the sales of securities and property rights to its controlling party until 1 March 2019<sup>11</sup>.

### ***The takeaway***

Those who wanted to declare their foreign assets but failed to do so in due time will have a second chance. An additional incentive to choose the amnesty filing option will be the active stance of Russia on enforcing the procedures for exchanging financial information. This exchange programme will allow Russian tax authorities to obtain information on foreign accounts and structures controlled by Russian tax residents. Discuss with your consultants all the pros and cons of filing for amnesty and the best ways to declare your assets.

We will soon host a webinar to tell you about all the significant aspects of the second stage of the amnesty programme. We will also hold a seminar to discuss all practical aspects of applying the new provisions in tax and currency legislation. Follow our announcements and participate in our events!

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<sup>8</sup> 15.1 - Violations of the rules for processing currency and cash register transactions and violations of requirements on the use of special bank accounts; 15.3 - Violations of the tax registration time frame; 15.4 - Violations of time frames set for submitting information on accounts opened and closed in banks and other credit institutions; 15.5 - Violations of time frames for filing tax returns; 15.6 - Failure to provide (failure to communicate) information required for tax control purposes; 15.11 - Grave violations of accounting rules and rules for submitting financial statements; 15.25 - Violations of the currency legislation of the Russian Federation and legislative acts issued by currency control authorities.

<sup>9</sup> There will also be a shift in the deadlines if such liquidation took place later because of circumstances beyond the controlling party's control. Respective amendments will be made to paragraphs 4 and 5 of Article 217.60 of the RTC.

<sup>10</sup> See the previous comment. Amendments will be made to Article 3 of Federal Law No. 376-FZ of 24 November 2014.

<sup>11</sup> See the previous comment. Amendments will be made to Article 309.1.10 of the RTC.

## Let's talk

We would be happy to answer any questions you may have.

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