

Legal Alert

Loan Repatriation: Planned Changes

EY's Russian Tax & Law practice was named a **leading Tax firm in Russia** in "World Tax 2015," an annual guide published by the *International Tax Review*.

At the end of January 2016 the Duma passed the following draft laws in their first reading:

- ▶ amending the Currency Control Law with regard to extension of the repatriation requirement to loans, and to Article 15.25 of the Administrative Offences Code¹ ("the Loan Repatriation Bill"),
- ▶ increasing the limitation period for the imposition of administrative sanctions.²

At the time of writing, a draft law prescribing criminal sanctions for failure to repatriate loans is at the public discussion stage.³ The public discussion process is due to end on 21 March.

¹ [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=888029-6](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=888029-6).

² [http://asozd.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=925087-6](http://asozd.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=925087-6).

³ <http://regulation.gov.ru/p/44741>.

Obligation of a Resident to Repatriate Loans Provided to Non-Residents

The Loan Repatriation Bill was passed by the Duma in the first reading on 29 January.

An amendment to the Currency Control Law is proposed under which residents would be required to ensure that funds provided to non-residents under loan agreements are paid back into their accounts with authorized (Russian) banks.

Under the draft law, residents would also be obliged to provide information to authorized banks on the time limits within which non-residents are expected to repay money lent to them by residents under the terms of loan agreements.

It will be recalled that there is currently some uncertainty over whether a loan has to be repatriated. According to a literal reading of Article 19 of the Currency Control Law, repatriation requirements apply to foreign trade transactions, and it cannot be said for certain that these include loan agreements.

In 2014, however, the Federal Arbitration Court of the North-Western District asserted in a ruling⁴ that:

- ▶ the transfer of currency under a loan agreement to a non-resident is a currency operation which is subject to state control,
- ▶ failure to repatriate money lent under such an agreement is a punishable offence.

Administrative Sanctions

The Loan Repatriation Bill also envisages the inclusion in the Administrative Offences Code of a new offence in the form of a failure by residents to ensure the timely receipt from non-residents in their Russian bank accounts of

funds which were provided to those non-residents under loan agreements.

The amendments, if passed, will enter into force from the day of their official publication. Given, however, the above-mentioned court position that there is already a requirement to repatriate loans, it is not clear whether the new provisions would apply to loan agreements which were concluded before the official publication date but are still in effect at the time of publication.

Criminal Sanctions

The Ministry of Finance has drafted amendments to Article 193 of the Criminal Code prescribing criminal liability for residents who have failed to ensure the repayment of loans granted to non-residents to their Russian bank accounts. This would be in addition to the existing crime of violating repatriation requirements in relation to foreign trade transactions.

A resident may face criminal sanctions for a large-scale violation of repatriation requirements, i.e. in excess of 6 million roubles.

The draft also provides for the confiscation of funds for failure to repatriate funds in foreign currency or roubles.

Limitation Period for the Imposition of Administrative Sanctions for Currency Offences to be Increased to Two Years

Under the current Administrative Offences Code, the limitation period for the imposition of administrative sanctions for the violation of Russian law and acts of currency regulation authorities is one year from the date on which an administrative offence was committed.

The Duma is now considering a bill to increase the limitation period for currency offences to two years.

The bill was passed in its first reading on 22 January.

⁴ Ruling of the Federal Arbitration Court of the North-Western District of 29 April 2014 on Case No. A05-9937/2013.

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