

Legal Alert

Improvements to the Capital Amnesty Mechanism

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On 25 March 2016 the anticipated amendments to Federal Law No. 140-FZ of 8 June 2015 "Concerning the Voluntary Declaration by Physical Persons of Assets and Bank Accounts (Deposits) and Concerning the Introduction of Amendments to Certain Legislative Acts of the Russian Federation" ("**the Amnesty Law**") were passed by the State Duma in both the second and third readings and submitted to the Federation Council.

Why the Hurry?

The capital amnesty announced in 2015 did not produce the desired effect. According to the Federal Tax Service, a little over 300 declarations were submitted from the date on which the campaign began up to the end of 2015. One of the causes of this low response was the existence of grey areas in the Amnesty Law, which we highlighted in a Legal Alert dated 22 January 2016.

At the end of 2015 the deadline for submitting a declaration was extended to 30 June 2016, but the mechanism itself remained unchanged.

With little more than three months to go before the campaign was due to end, the Government decided to insert amendments to the Amnesty Law in an unrelated bill (concerning amendments to Articles 24 and 40.1 of the Federal Law "Concerning Banks and Banking Activities"), which had already been passed by the State Duma in the first reading. On 25 March 2016 the bill was passed in the second and third readings and submitted to the Federation Council.

What Will Change?

The most important change is that guarantees of the non-imposition of administrative sanctions are extended to include currency offences right up to the date of submission of a special declaration. In other words, unlawful currency operations, such as the crediting of proceeds from the sale of securities to foreign bank accounts, which occurred in 2015 or early 2016 may be exempted from a fine of 75%-100% of the transaction amount.

In addition, the guarantees now definitely apply to property belonging to controlled foreign companies rather than only to the taxpayer itself. It is no secret that many controlled foreign companies (CFCs) were created by individuals for the sole purpose of owing foreign real estate.

Detail is added to the definition is given of what constitutes use of property in the form of shares and participating interests in Russian and foreign companies and CFCs in relation to which a declarant is a shareholder, participant or controlling person. Use includes, for instance, operations involving the acquisition and disposal of assets of the companies concerned.

The amendments also eliminate the requirement to repatriate property situated in a state (territory) which is on the FATF list or does not exchange tax information with the Russian Federation, which has raised a great many questions.

The new provisions will enter into force from the date of publication of the law, but will apply to persons who have already submitted a special declaration.

Authors

*Anton Ionov
Georgy Kovalenko
Anna Savon*

What Will Not Change?

A number of contentious issues, however, have not been reflected in the draft. In particular, it does not provide for:

- ▶ the inclusion of intangible assets and debt obligations in the list of items to be declared;
- ▶ money held in accounts with foreign banks to be declared as well as the accounts themselves;
- ▶ the declaration of property which is no longer in the declarant's possession (having been sold, gifted, etc.);
- ▶ clarification of the term "nominal holder".

There is also continued uncertainty over whether the guarantees cover tax offences and crimes associated with the non-payment of tax for 2014.

Is it Worth Using the Amnesty?

It is certainly important to take a considered approach to deciding whether participation in the amnesty campaign makes sense, based on a thorough analysis of whether the information covered is sufficient. For a number of individuals the improved amnesty mechanism may be an effective way of resolving issues in terms of historical risks.

Inquiries may be directed to one of the following executives:

Moscow

CIS Tax & Law Leader Peter Reinhardt	+7 (495) 705 9738	Cross Border Tax Advisory Vladimir Zheltonogov	+7 (495) 705 9737
Oil & Gas, Power & Utilities Alexei Ryabov	+7 (495) 641 2913	Marina Belyakova	+7 (495) 755 9948
Victor Borodin	+7 (495) 755 9760	Transfer Pricing and Operating Model Effectiveness Evgenia Veter	+7 (495) 660 4880
Financial Services Irina Bykhovskaya	+7 (495) 755 9886	Steve Cawdron	+7 (495) 287 6536
Ivan Sychev	+7 (495) 755 9795	Maxim Maximov	+7 (495) 662 9317
Maria Frolova	+7 (495) 641 2997	Tax Policy & Controversy Alexandra Lobova	+7 (495) 705 9730
Industrial Products Alexei Kuznetsov	+7 (495) 755 9687	Alexei Nesterenko	+7 (495) 622 9319
Andrey Ignatov	+7 (495) 755 9694	Global Compliance and Reporting Yulia Timonina	+7 (495) 755 9838
Consumer Products & Retail, Life Sciences & Healthcare Dmitry Khalilov	+7 (495) 755 9757	Sergei Pushkin	+7 (495) 755 9819
		Alexei Malenkin	+7 (495) 755 9898
Real Estate, Hospitality & Construction, Infrastructure, Transportation Vladimir Abramov	+7 (495) 755 9680	Law Dmitry Tetiouchchev	+7 (495) 755 9691
Svetlana Zobnina	+7 (495) 641 2930	Alexey Markov	+7 (495) 641 2965
Anna Strelnichenko	+7 (495) 705 9744	Georgy Kovalenko	+7 (495) 287 6511
		Tobias Luepke	+7 (495) 641 2935
Technology, Telecommunications, Media & Entertainment Ivan Rodionov	+7 (495) 755 9719	St. Petersburg Dmitri Babiner	+7 (812) 703 7839
Vadim Ilyin	+7 (495) 648 9670	Anna Kostyra	+7 (812) 703 7873
Tax Technology Sergey Saraev	+7 (495) 664 7862	Vladivostok Alexey Erokhin	+7 (914) 727 1174
People Advisory Services Zhanna Dobritskaya	+7 (495) 755 9675	Ekaterinburg Irina Borodina	+7 (343) 378 4900
Ekaterina Ukhova	+7 (495) 641 2932	Krasnodar Elena Luts	+7 (812) 703 7800
Sergei Makeev	+7 (495) 755 9707		
Gueladjo Dicko	+7 (495) 755 9961		
Private Client Services Anton Ionov	+7 (495) 755 9747		
Customs & Indirect Tax Vitaly Yanovskiy	+7 (495) 664 7860		
Transaction Tax Yuri Nechuyatov	+7 (495) 664 7884		

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Contacts

Almaty	Moscow
+7 (727) 258 5960	+7 (495) 755 9700
Astana	Novosibirsk
+7 (7172) 58 0400	+7 (383) 211 9007
Atyrau	Rostov-on-Don
+7 (7122) 99 6099	+7 (863) 261 8400
Baku	St. Petersburg
+994 (12) 490 7020	+7 (812) 703 7800
Bishkek	Tashkent
+996 (312) 39 1713	+998 (71) 140 6482
Ekaterinburg	Tbilisi
+7 (343) 378 4900	+995 (32) 215 8811
Kazan	Togliatti
+7 (843) 567 3333	+7 (8482) 99 9777
Kyiv	Vladivostok
+380 (44) 490 3000	+7 (423) 265 8383
Krasnodar	Yerevan
+7 (861) 210 1212	+374 (10) 500 790
Minsk	Yuzhno-Sakhalinsk
+375 (17) 240 4242	+7 (4242) 49 9090

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