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Kira Egorova, Elena Novikova and Sergey Artemiev explain who should consider submitting a voluntary disclosure under Russia's capital amnesty

At the end of 2014, President Vladimir Putin announced that Russia would embrace tax transparency and leave its offshore days behind. Significant changes and innovations came into force in 2015, including the 'de-offshorisation law',¹ which substantially changes the way businesses operate in Russia, affects most wealth-management and private-holding structures, and increases tax disclosure obligations and tax control over Russian and foreign companies. This triggered a demand for a simple and transparent guarantee mechanism to protect businesses from certain historic practices.

AMNESTY FOR INDIVIDUALS

A month after signing the de-offshorisation law, Putin proposed a total amnesty for individuals. As a result, *Federal Law No.140-FZ* (the Law)² entered into force on 1 July 2015, providing guarantees for the actions taken by a declarant before 1 January 2015. Under the provisions of the law, individuals can disclose their assets and foreign bank accounts (deposits) and receive guarantees such as relief from particular criminal and tax liability, and relief from administrative liability for currency regulation violations related to the use of foreign bank accounts.

A RIGHT OR OBLIGATION?

Disclosure of the information is an absolute right of the individual. Only the individual, at their sole discretion, can decide to submit the declaration and determine the list of information and supporting documents to be presented, except for the obligation to file the notarised copy of the nominee agreement, if the individual declares assets held through nominees.

Notably, the law does not require the repatriation of movable property, except where it is located in a country included in the Financial Action Task Force's list or in a country that does not exchange tax information with Russia (although this list has not yet been approved, it will probably include popular offshore jurisdictions, e.g. BVI).

WHEN IS IT WORTH SUBMITTING A VOLUNTARY DECLARATION?

Generally, individuals who decide to disclose their foreign holding structures under the controlled foreign companies (CFC) rules, in order to be

- 1 *Federal Law No.376-FZ*, dated 24 November 2014
- 2 'On Voluntary Declaration of Assets and Bank Accounts/ Deposits by Individuals and on Introducing Amendments to Certain Legislative Acts of the Russian Federation', dated 8 June 2015



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compliant with the current legislation and obtain immunity from possible historic breaches of Russian law, should consider submission of a voluntary declaration (VD).

Submission of a VD also provides an opportunity to make a tax-free transfer of assets from nominees to the beneficial owner. If an individual breached Russian currency regulations using an undeclared foreign bank account, they may also submit a VD to obtain relief from administrative liability, which may be up to 100 per cent of the value of the transaction violating the currency regulations.

Even if there are no potential claims with respect to the disclosed assets, a VD may be submitted in order to receive an extra guarantee, as the disclosed information is subject to enhanced tax secrecy and cannot be used against the declarant in court.

THE REVERSE SIDE OF THE COIN

Although the law provides guarantees for individuals and may be used to deal with business-restructuring risks connected with the de-offshorisation of the Russian economy, the amnesty has met with some doubt, as there are still unresolved issues under the law and there have been no large-scale amnesty campaigns in recent Russian history.

Relief from liability applies to particular tax, currency and customs violations. However, economic violations subject to criminal liability (such as fraud) are excluded from the exemption list. It remains unclear as to how to deal with the repatriation requirement when the disclosed assets are shares in a foreign company (holding other assets) or registered in an offshore jurisdiction on the blacklist of states not exchanging tax information with Russia.

The law provides guarantees for the declarant and managers of the companies used to acquire, use or dispose of the declared assets, but the guarantees do not formally cover the possible tax liability of such companies, and disclosure may result in tax claims against the companies.

The business community is still evaluating the possible benefits of the amnesty, waiting for the official explanations of the regulators, and considering it alongside restructuring of assets under the CFC rules. Meanwhile, the clock is ticking, as the deadline for submitting a VD is 31 December 2015.