The Private Wealth & Private Client Review

Fifth Edition

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John Riches

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EDITOR'S PREFACE

The first six months of 2016 have been characterised by turbulence for the world in general, and particularly for those holding significant private wealth. The key development of 2016 to date has been the publication of the 'Panama Papers'. The response to the publication from governments and the Organisation for Economic Co-operation and Development (OECD) has reinforced trends seen in prior years towards greater transparency and regulation in the domain of cross-border holding structures and in the context of beneficial ownership information.

i Panama Papers

Many have pointed to the irony surrounding the approach taken by the International Consortium of Investigative Journalists (ICIJ) in Washington in the context of its publication of the Panama Papers. The ICIJ's website sets out an elaborate procedure for whistle-blowers to provide information to them on a 'confidential' basis and the organisation has been resolute in its assurances that it will keep its sources confidential. So while the ICIJ argues for full transparency of information about the holding of private wealth, it does not consider that this standard should apply to those who provide information about wealthy families, even if the information is secured by unlawful means. Clearly, the Panama Papers have highlighted some issues concerned with offshore structures being used to provide a veil of secrecy to allow unlawful activity to go undetected and there is no sympathy for those whose unlawful acts have been exposed. Of deeper concern, however, is those who have sought to defend their privacy and yet have been accused of wrongdoing on a completely false basis – the case of Emma Watson who placed her home in the name of an offshore nominee to protect herself against stalkers serves to illustrate this trend. What has been striking from a UK perspective is the extent to which journalists from respected media organisations comment on issues relating to offshore structuring using language that is sensationalist in tone and frequently wildly inaccurate. The apparent furore over the former prime minster David Cameron's holding in an entirely conventional offshore fund structure established by his late father for third-party investors was reported by the BBC as an 'offshore fund trust'. The impression

one gained from this reporting was that the journalist concerned was merely including as many words in the article that he felt had negative connotations to achieve maximum effect, regardless of their technical inaccuracy.

While the Tax Justice Network asserts in a 28 June 2016 report that 'trusts become the preferred choice by tax dodgers, corrupt officials or money launderers' to avoid transparency, there is precious little evidence of the large-scale use of trusts that has been unearthed by recent revelations such as the Panama Papers. A perspective that will not be published in any newspaper in the context of the Panama Papers is to explain that the vast majority of offshore trusts are used by tax-compliant families for legitimate wealth structuring and intergenerational succession planning. However, we should not assume that this will silence those who oppose trusts as a matter of principle. The party line of the Tax Justice Network and others is that the reasons trusts escape frequent references in the context of scandals is because they are so effective in hiding wrongdoers and so are very difficult to detect. They clearly have no idea about the depth of scrutiny a family is subject to in terms of anti-money laundering or know-your-client procedures to establish a trust in a well-regulated offshore finance centre.

I do not suggest that we can afford to be complacent about the scope for misuse of offshore vehicles in any way, but it is essential we take every opportunity to explain to policymakers the entirely legitimate purposes for which the overwhelming majority of families employ trusts and similar structures as part of their succession planning and wealth structuring.

ii The Common Reporting Standard (CRS) update

We are now fully in the era of the CRS, which became effective on 1 January 2016. Certain aspects of the CRS are causing a degree of confusion in terms of implementation, especially in the trust arena. Many of the difficulties here stem from the basic conceptual framework, copied over from the Foreign Account Tax Compliance Act (FATCA), which treats a trust fund as a 'financial account'. The most notable 'glitch' in this framework is in identifying those persons connected with trusts who need to be reported on. When trustees self-report as reporting financial institutions, the concept of an 'equity interest' does not name protectors. Alternatively, if one turns to the parallel list for trusts that are passive non-financial entities, protectors are expressly named. The OECD's own position set out in a recent FAQ is that the protector should always be named, but the formal legal basis included in the CRS model treaty is doubtful. It is to be hoped that in the second half of 2016 it will be possible to obtain clearer guidance on many areas of ambiguity so that all parties are fully prepared for the first wave of CRS-related disclosure for the 2016 financial year, which will be required before May 2017.

One silver lining to this confusion and uncertainty on protectors is a renewed focus on the choice of an appropriate person to serve in a protector role. In some cases, families are electing to formalise governance processes around fiduciary holding structures and introduce independent professional protectors in place of close relatives or family friends whose understanding of their duties may have been somewhat limited.

There already appears to be a two-speed world in the context of CRS with an enthusiastic group of early adopters who have signed the Multilateral Competent Authority Agreement so as to be able to exchange information with as many nations as possible, while a more reticent group of nations plan to adopt CRS on a bilateral treaty-by-treaty basis. The EU and Crown Dependencies and Overseas Territories are in the first group, while notably the Bahamas, Hong Kong, Singapore and Switzerland are in the second.

There is an emerging trend of consolidation of offshore structures into single jurisdictions to reduce complexity and multiple service provider compliance. It will be interesting to

see which jurisdictions win out in this time of transition and, in particular, whether those international finance centres such as Jersey and Cayman that have placed themselves in the early adopter group will benefit from this stance. It is becoming apparent that many clients are keen to demonstrate their commitment to working in a transparent environment to forestall the type of ill-informed criticism unleashed in the wake of the Panama Papers.

iii Exchange of Beneficial Ownership Information (EBOI)

EBOI is the latest initiative being promoted by the G5 in Europe (the UK, Germany, France, Spain and Italy) and was a direct response to the Panama Papers' publication. EBOI builds on the same concepts that underpin the CRS and FATCA. The aim is, in parallel to the tax-related disclosure generated by FATCA and the CRS, to require the annual provision of beneficial ownership information on companies, trusts, foundations and similar legal arrangements or entities. The starting point is to require all jurisdictions that participate to maintain an accurate register in the hands of competent authorities to identify the beneficial owners of all such legal entities and arrangements.

The OECD is due to report back on the framework for potential implementation of EBOI in October 2016. What is increasingly apparent from the initial proposals is that their scope could well be significantly wider than the CRS framework. Where EBOI could widen the disclosure of information further is in requiring every single entity within a holding structure to have its own beneficial ownership register. If one takes, for example, the disclosure that relates to the holding structure ultimately held through a trust, the current rules under the CRS enable trustees that are themselves reporting financial institutions to take overall responsibility for reporting on the entire structure. If all underlying entities held within the trust are themselves reporting financial institutions or active non-financial entities (NFEs), only a single report is provided in relation to the trust as a whole. However, under EBOI, it may well be necessary to make multiple disclosures on all holding entities in a trust even though they have a common set of beneficial owners. The same rules could also apply for multiple layer holding structures ultimately held by individuals.

At inception, the proposals for EBOI are based around the idea of access being provided to 'competent authorities' such as regulators and law enforcement agencies. Predictably, there are already calls from NGOs for such registers to be made public. While many jurisdictions (for example, Jersey and Bermuda) have required beneficial ownership information on companies to be provided to them for many years, the effect of the EBOI proposals seems likely to require the creation of trust registers in many jurisdictions for the first time. It remains to be seen how these registers would work in practice. It is proposed that there will be an annual requirement to update the register to note any material changes. Potentially, this annual update will need to be provided in parallel to CRS and FATCA-type data, which tax authorities required by the end of May, with reference to the position as at the end of the prior calendar year.

iv Public registers of beneficial ownership

The UK's People with Significant Control (PSC) register has been operational since 30 June 2016. It will be interesting to see the approach taken by EU jurisdictions in implementing the Fourth Anti-Money Laundering Directive. The PSC register substantially implements that directive in the UK, although its terms are not completely aligned with the Fourth Anti-Money Laundering Directive.

It is already apparent, in considering the information to be provided for the PSC register, that the ultimate quest to name natural persons rather than entities can give rise to some unexpected results. As with the CRS, particular difficulties arise where a UK company is ultimately controlled by a trust. This is because in considering the application of the rules in a trust context, one does not name, for example, corporate trustees. One is required to look to individuals who control those corporate entities. This means that the information provided with respect to those natural persons is unlikely to have any meaningful connection with stated objectives of the legislation in providing greater clarity for third parties dealing with the company as to who, ultimately, influences its activities. It is also striking that in cases where the corporate trustee is owned by a listed group or controlled by a private equity firm, there may, in some circumstances, be no ultimate PSC required to be named.

If one contrasts the position here with that applicable to the French Trust Register, (ironically, made public on the same date, 30 June 2016), the information required to be made public under the French Register is extensive and, unlike the PSC register, requires one to provide details of the beneficiaries as well as the names of the trust. There is also a separate requirement to file a stand-alone 'event-based return' if the terms of a trust are modified in any way during the course of a calendar year.

The EU has recently published proposals to amend the Fourth Anti-Money Laundering Directive in the wake of the Panama Papers. In this context, it seems likely that the initial decision taken in 2015 not to require details of trusts to be placed on a public register will be reversed. If this proposal gains wider support (as seems likely), it will be interesting to see whether it will be modelled on the French register or will be more analogous to the UK PSC register.

iii Conclusion

In closing, it has never been more important for advisers to give balanced and considered advice to families on how best to structure their arrangements, not just in the light of prevailing family circumstances and tax considerations, but also in the knowledge of the likelihood that information about the holding structure will be subjected to greater regulatory, government and potentially public disclosure in the years ahead. The paradigm that currently prevails in Western Europe is markedly different from that applicable in Asia, the Middle East and Latin America.

It remains to be seen whether, in the long term, many international families who have compliant structures that are fully disclosed to tax authorities will favour the United States as a tax-favoured jurisdiction from which to administer their family structures. This is on the basis that with a thriving domestic trust industry, the US could well be seen as a reputable jurisdiction which protects families from unwarranted public intrusion into their personal affairs to a greater extent than traditional offshore finance centres if beneficial ownership registers do become public in due course.

John Riches
RMW Law LLP
London
August 2016

Chapter 32

RUSSIA

Maxim Alekseyev, Kira Egorova, Elena Novikova and Ekaterina Vasina[1]

I INTRODUCTION

In recent years, Russia has made an incredible breakthrough from the point of view of personal wealth development. Nowadays, the main goals of wealthy Russians are good management of the family property, safe transferring of wealth through generations, asset protection and confidentiality.

The current political situation with sanctions being imposed on particular individuals and companies, and developments in Russian tax and civil legislation have led to the increase in localisation tendencies since more wealthy Russians have expressed an interest in moving their businesses to the Russian jurisdiction. At the same time Russian people continue to use foreign instruments, such as trusts and foundations, in their estate planning rather than domestic instruments. The trends in Russia are in keeping with the worldwide trend of strengthening the framework for combating tax evasion and global transparency. It is clear that the tax-planning landscape is changing and that wealthy individuals with close ties to Russia are under pressure from the changes to Russian legislation and international trends and should determine what they might need to revise in their current operations and in planning future activity.

The above conditions gave rise to the development of wealth management services in Russia. Historically, wealthy Russians preferred a high level of self-involvement in asset management and worked a lot with foreign banks, family offices and investment agencies abroad. But we see today that in Russia such services have also started to be rendered by private and state Russian banks, and by emerging private wealth management offices.

1 Maxim Alekseyev is a senior partner, Kira Egorova is of counsel, Elena Novikova is of counsel and Ekaterina Vasina is an associate at ALRUD Law Firm.

II TAX

Russian legislation sets forth three levels of taxation: federal, regional and local. Currently, the following taxes are applicable to individuals: personal income tax (PIT) is among the federal taxes; regional taxes include transport tax, while local taxes include land tax and individual property tax.

Russia taxes worldwide income of its tax residents (individuals who stayed in Russia for more than 183 calendar days within 12 consecutive months) and Russian-sourced income of non-residents for tax purposes.

i Personal taxation

Personal income tax

Incomes of individuals are subject to PIT.

Individual tax residents should pay a rate of 13 per cent (general rate) on all income received worldwide (salaries, other remunerations, dividends, sale of property, etc.).

Non-residents pay PIT at a 30 per cent rate (except for certain types of employment remunerations taxable at a 13 per cent) and at a 15 per cent rate for dividends.

The 35 per cent rate applies to the certain types of income received by residents, such as interest on bank deposits exceeding certain limits; prizes and winnings received within promotional campaigns for goods, works or services where the relevant income exceeds 4,000 roubles; and certain others.

The PIT is levied on the total income of the taxpayer, but in some cases relevant deductions, allowances and exemptions may be enjoyed.

Capital gains

Capital gains are subject to PIT as general income, taxable at the 13 per cent rate.

Income from sale of the real estate, which was held for more than three years, is also exempted from PIT. Starting 1 January 2016 the minimum holding period for application of the exemption increased from three to five years. New rules will not be applicable in case the real estate was received as a gift, inheritance and in some other cases (the holding period entitling for the exemption will still be three years). If the holding period is less than three or five years, the resident may decrease the income derived from the sale of the property by the relevant expenses (allowances).

Sale of securities is subject to special rules. Generally, the taxable base is the proceeds from sale less documented costs. Income from the sale of certain securities may be tax exempted.

Taxation of donations and inheritance

There are no special taxes for donations and inheritance, so PIT is applicable in some cases with the following exemptions.

Gifts (in cash and in kind) from other individuals are not taxable except for gifted real estate, vehicles and shares.

Any gifts between close family members (spouses, parents and children, grandparents and grandchildren) are tax exempt.

Inheritance is generally exempted from PIT except for royalties, which are taxed as ordinary income at the 13 per cent rate for Russian tax residents.

Taxation of individual property

Individuals (residents and non-residents) are subject to transport tax pertaining to owned vehicles registered in Russia. Moreover, individuals are also obliged to pay land tax on land plots in possession.

Before 2015 individuals were obliged to pay individual property tax on the inventory value of real estate registered in Russia, which was lower than market price of the real estate.

With the effect from 1 January 2015, the property tax for individuals is calculated on the cadastral value of real estate, which is almost equivalent to market value.

The transition period lasts from 2015–2019. During this period the tax amount will be calculated using special coefficients, which should ensure a gradual increase of the tax amount for the holders of property.

ii 'De-offshorisation' of the Russian economy

The Russian government, in its Key Guidelines on Russian tax policy for 2014–2016, announced the need for the implementation of rules that create an effective mechanism to prevent Russian businesses from misusing low-tax jurisdictions and receiving unjustified tax benefits. Following this tax initiative, the Russian tax law was subject to significant changes during 2014–2015.

One of the key developments is the adoption of the De-offshorisation Law,[2] the key aspects of which are outlined below.

It has also been noted that in the development of these initiatives, to ensure a smooth transition period to new regulatory requirements, opportunities such as voluntary declaration of assets and bank accounts or deposits have been provided to businesses. This 'amnesty campaign' was held from 1 July 2015 to 30 June 2016, and during it declarants had the right to disclose certain types of assets belonging to them as of the end of 2014 that were still in their possession at the date of submission of the special declaration, and receive release of criminal, administrative and tax offences liabilities under certain type of violations.

'Beneficial ownership' concept

For the purposes of the application of double tax treaties (DTT) the beneficial owner of income is defined as a person (or entity) who by virtue of the direct or indirect participation in the foreign entity, or control over the entity, or by virtue of other circumstances has the right to independently use or dispose of the received income. Moreover, the beneficial owner of income is a person (or entity) who authorised the other person to dispose of the received income on behalf of the entity.

Current Russian tax practice provides for the following criteria under which an entity cannot be regarded as a beneficial owner of income:

a the entity has narrow powers to use and enjoy the received income;

b the entity exercises intermediary functions with respect to the income for the benefit of another entity or person and does not undertake any other business functions or risks; and

2 Federal Law No. 376-FZ on amendments to the Part I and Part II of Russian Tax Code (regarding taxation of profits of the controlled foreign companies and incomes of foreign organisations) of 24 November 2014.

c the entity directly or indirectly transfers received income (fully or partially) to another entity (or person), which would not enjoy a tax benefit under a DTT if it received the income directly.

The above provisions of the Russian tax law are largely based on the guidance provided for in the official Commentary to the articles of the OECD Model Tax Convention, which applies the 'substance over form' approach to the beneficial owner of income concept.

In respect to the above-mentioned changes, the Russian tax authorities started actively apply the 'beneficial ownership' concept to challenge application of DTT benefits for cross-border payments.

Taxation of capital gains from the indirect transfer of Russian real estate

The De-offshorisation Law stipulates that income derived from sale of shares in foreign organisations whose assets consist of more than 50 per cent of immoveable property located in the territory of Russia should be taxed in Russia (currently at a rate of 20 per cent).

Moreover, the De-offshorisation Law requires foreign organisations (structures established in any form other than a legal entity) that own immoveable property in Russia to provide annually, along with property tax returns, information regarding their stakeholders (shareholders, founders, beneficiaries, trustees, etc.), provided their share in a foreign organisation exceeds 5 per cent.

'Tax residency' concept

The De-offshorisation Law introduced into Russian legislation the concept of tax residency for companies. The foreign company may be recognised as a Russian tax resident if it is managed from Russia.

Recognition of a foreign organisation as a Russian tax resident will result in taxation of its worldwide income in Russia and an obligation to comply with other requirements and rules provided by the Russian tax law.

Controlled foreign company (CFC) rules

A CFC is defined as a foreign organisation (or foreign structure established in any form other than a legal entity) that is not a Russian tax resident, but controlled by a Russian tax resident (controlling person).

In this connection, Russian tax residents are required to notify the Russian tax authorities of the following:

a direct or indirect participation in foreign companies if the share exceeds 10 per cent;
b the establishment of foreign structures in any form other than a legal entity; and
c CFCs in respect of which Russian tax residents exercise control.

In accordance with the CFC rules, undistributed profits of CFCs may be taxed in Russia in the hands of the controlling person, being Russian tax resident, at a rate of 13 per cent (if the controlling person is an individual) or at a rate of 20 per cent (if the controlling person is an entity).

iii Exchange of information

Besides the De-offshorisation Law, other important initiatives allowing Russian tax authorities to use different instruments of information exchange have been launched in recent years, such as:

a The publication in 2014 of a Model Agreement on Exchange of Information on Tax Matters as a basis for the conclusion of bilateral agreements with offshore jurisdictions (the Russian Model of Tax Information Exchange Agreement – TIEA).

b The ratification of the OECD Convention on Mutual Administrative Assistance on Tax Matters, which came into force on 1 July 2015.

c The signing on 12 May 2016 of the OECD's Common Reporting Standard multilateral competent authority agreement with a provision to start financial information exchange for 2017 in 2018.

iv Restrictions for public officials

Since 2013, the Russian government has adopted several federal laws that impose certain restrictions related to public officers possessing foreign assets.

The restrictions are imposed on a large group of public officers, including members of federal and regional parliaments, municipal officials, heads of regional and federal authorities, their deputies, judges, other officials and officers in state corporations (companies), funds and other organisations established by Russia and appointed by the president, government or the General Prosecutor, and certain employees of organisations established by Russia, where those employees are involved in decision-making on matters concerning the sovereignty and national security of Russia.

Public officers, their spouses and children under 18 are not entitled to:

a open and hold a foreign bank account (deposits);

b keep funds in foreign banks; and

c hold or use foreign financial instruments.

v Currency regulation: foreign accounts of individuals

The Law on Currency Regulation[3] sets a number of limitations and obligations with respect to use of foreign bank accounts by Russian currency residents.

Thus, a Russian citizen is not considered to be a currency resident after one year of living abroad without visiting Russia.

Residents, except for state officials, can freely open foreign accounts. However, residents must notify Russian tax authorities about opening, closing or changing details of their foreign accounts within one month, and starting 1 January 2015, they must submit reports on movement of funds via their foreign bank accounts.

Residents can receive into their foreign accounts only those types of funds that are expressly allowed by law. The law contains the limited list of such transactions.

In 2014, the list of funds that may be transferred to a resident's foreign bank account[4] was expanded to include the following types of payments: accumulated coupon interest,

3 Federal Law No. 173-FZ on Currency Regulation and Currency Control of 10 December 2003.

4 Opened in banks of states being members of OECD or FATF.

income gained on foreign securities such as dividends, payment on bonds and bills, payments upon reduction of the charter capital of a foreign security issuer and some others. By the end of 2015, further liberalisation of the Law on Currency Regulation was carried out: resident individuals are allowed to receive into accounts opened with banks in OECD or FATF countries income from non-residents from the transferring of funds and securities into trust management conducted by the non-resident, and to receive funds obtained as the result of disposal of foreign-listed securities (last effective from 1 January 2018).

Residents can freely spend funds from their foreign bank accounts, except for transactions related to transfer of property and provision of services in Russia.

The fine for violation of these rules is up to 100 per cent of the amount of the illegal currency transaction.

III SUCCESSION

Russian law applies to those inheritance relations in which the last permanent place of residence of a testator was in Russia or the testator's real estate property is located in Russia, provided an international agreement does not state otherwise.

Russian law provides for two types of succession: by will and by operation of law.[5] In cases of succession by operation of law, all legal heirs who are called upon to inherit in compliance with the succession priority shall inherit in equal shares. Heirs of the next line of the priority will succeed only if there are no heirs of the previous line. The order of succession may be changed by composing a will. In general, foreign wills are recognised as valid in Russia if they are made in accordance with the legal provisions of the country where the testator had his or her last place of residence when making the will, or its form is in compliance with the requirements of the place of execution of the will or Russian law.

Composition of a will grants the testator the freedom of disposal of his or her property at his or her own discretion and in any proportion. However, certain mandatory rules of Russian law cannot be changed in any way by a will (forced heirship rules,[6] compulsory share of a spouse with regard to joint property).[7]

Forced heirship rules provide that the minors or disabled children of the testator, his or her disabled spouse and parents, as well as disabled dependants of the testator in some cases, irrespective of the provisions of the will, shall inherit no less than half of a share such a person would be entitled to in the event of inheritance by law (that is in the absence of a will). The above persons shall be entitled to claim the obligatory share from the part of the property subject to inheritance that is not stated in the will. If such property is not enough to satisfy the claims of the forced heirs, they are entitled to claim their obligatory share even from the property inherited by will.

The only option to withdraw from succession any heirs entitled to the compulsory share is to execute *inter vivos* transactions, such as making donations or establishing a trust or foundation in respect of the property that overrules legal succession of the property.

One more specific aspect of Russian inheritance law is that a testator's spouse is entitled to a compulsory share of property held jointly with the testator (half of the joint

5 Article 1111 of the RF Civil Code.

6 Article 1149 of the RF Civil Code.

7 Article 1150 of the RF Civil Code.

property). This half of the joint property is not included in the inheritance and fully belongs to the surviving spouse. The other half is included in the estate and is divided between heirs (the surviving spouse can also be included in the list of the heirs). This rule applies even if a will provides otherwise.

To come into possession of the estate, the heirs should submit an application to the notary at the place of the testator's last place of residence or at the place of real estate location in the Russian Federation (depending on circumstances) no later than six months after the testator's death.

The notary shall issue a certificate of succession right to those heirs who come into possession of the estate. It should be noted that such a certificate is usually issued by the notary upon the expiry of the six-month period after the testator's death, except where the heirs may be clearly identified and where no disputes between the heirs are expected to arise.

Despite the fact that Russian civil legislation was undergoing large-scale reform, succession law has not faced any fundamental changes for a long time. From time to time certain legislative provisions are amended to comply more with practical needs.

However, in May 2015, the Draft of the Law on making amendments to inheritance rules (the Draft of the Law) was submitted to the Duma of the Russian Federation.

The Draft of the Law proposed new instruments for inheritance: joint testament of the spouses and testament agreement.

According to the proposed provisions, joint testament of the spouses should set the order of the transfer of the rights with regard to the joint property of the spouses or the personal property of one of the spouses in case of the death of one of them, as well as the death of both of them at the same time.

As with regard to the testament agreement, it may be concluded with any person that may inherit. As well as the testament, it establishes the order of the inheritance, but in addition, it allows to impose obligations on the other party of the agreement with regard to the actions that should be taken after the death of the testator. The agreement can be terminated or amended under the mutual consent of the parties or under the court order in the particular circumstances.

This initiative also provides the individuals with a right to establish family funds as succession vehicles, including charity funds.

The Duma of the Russian Federation mentioned the Draft of the Law in a first reading on 7 June 2016.

There have not been any recent major developments affecting personal property in Russia. In this regard, certain basic aspects of Russian matrimonial law are described below.

In general, the Family Code recognises joint property rights as the legal property regime of spouses. Joint property includes any property gained by the spouses during their marriage, irrespective of in whose name it was gained or by whom such monetary funds were contributed.

Where there is an intention to dispose of joint property, the relevant spouse shall receive the consent of the other spouse for such a disposal.

In Russia, only an officially registered marriage has the legal consequences mentioned above. From the point of view of Russian family law, cohabitation has no legal standing. Registration of same-sex marriage is not permitted.

Spouses are free to change the joint property regime to a separate property regime by entering into a matrimonial agreement. However, certain restrictions shall be observed: the

Family Code provides that the court can find a matrimonial agreement invalid fully or in part upon the demand of one of the spouses, provided the terms of the matrimonial agreement place this spouse in a highly unfavourable situation.

The matrimonial agreement can be concluded before or after the state registration of a marriage. The formal requirements for the validity of matrimonial agreements concluded in Russia are that such agreements shall be executed in written form and certified by the notary public.

Where a separate property regime has been established under a matrimonial agreement, property is no longer the joint property of the spouses and, therefore, the consent of the other spouse for the conclusion of a transaction with the separate property of the spouse is not required. Moreover, following changes to the joint property regime under a matrimonial agreement, in cases of inheritance, a surviving spouse is not entitled to claim a compulsory half share in joint property. Nevertheless, the surviving spouse is still entitled to inherit on other grounds (if mentioned in a will or, in the absence of a will, by operation of law as an heir of the first order – provided that the spouse is not deprived of the inheritance by the testator).

IV WEALTH STRUCTURING & REGULATION

Russian legislation does not recognise the concept of the 'trust' or the 'foundation'. However, at the time of writing, Russian legislation does not hinder its citizens and residents from transferring assets to foreign trusts whether as the settlor, beneficiary or protector, etc., of such structures. Transferring assets to such a structure breaks the ownership to the assets and the assets will then be considered to be owned not by the settlor of the structure but by the third parties (e.g., the trustees). In such cases, Russian succession law is not applicable.

The transfer of assets to both trusts and foundations is not regarded as a taxable event. Income received from trusts and foundations as a general rule is subject to PIT at the rate of 13 per cent.

When Russian citizens and residents intend to transfer their property to foreign trusts, certain precautions should be observed. Considering the absence of the concepts of 'trust' and 'foundation' in Russia, Russian citizens and residents cannot transfer their Russian assets directly to a trust (or foundation) but only through a foreign company.

Moreover, Russian matrimonial law provides that the transfer of assets being joint property of spouses to a trust or foundation requires the consent of the other spouse for such action; otherwise, such a transfer may be disputed through a court order as a violation of Russian family law.

Furthermore, despite the absence of the relevant court practice in Russia, to avoid possible disputes between heirs, the forced heirs should be included as beneficiaries of the relevant structure. Alternatively, a person transferring assets to a trust or foundation may otherwise ensure that the compulsory shares of the forced heirs will be satisfied from other assets directly possessed by the deceased and not transferred to the trust.

In the context of wealth structuring, it is important to note that the Russian citizen shall inform the Russian state authorities about the fact that he or she has another citizenship or residence permit or other valid document confirming the right of permanent residence in a foreign country. The notification may be submitted in person, by a representative (authorised by law as well as by the power of attorney) or via the federal postal service. Failure to perform this duty entails administrative or criminal liability (depending on the

nature of the violation). The administrative liability occurs in cases of late filing or provision of incomplete or deliberately false information and entails a fine in the amount of 500 to 1,000 roubles.[8] Failure to provide notification at all entails a criminal liability with one of the following consequences: a fine of up to 200,000 roubles; a fine of the amount of the wages or other income of the convicted person for a period up to one year; or the obligation to perform compulsory works for up to 400 hours.[9]

Pursuant to the amendments, these changes are not applicable to persons residing outside Russia (i.e., those not registered with a place of living in Russia and living abroad).

In addition, we would like to bring your attention to the recent changes in the Law on civil registry acts that established an obligation to inform Russian state bodies about civil registry acts committed with respect to the Russian citizen outside the territory of the Russian Federation, as well as creating a unified state register of civil acts (the Register) and transmission of books on civil acts into electronic form.

In accordance with respective amendments, the citizen of the Russian Federation, with respect to whom a civil act was registered outside the territory of the Russian Federation, should submit information about such registration to the civil registry located at his or her place of living in the Russian Federation or Russian consulate. Information should be submitted within one month from such registration.

This information should be stored in the Register, which will compile all information about civil acts registered with respect to Russian citizens outside the territory of the Russian Federation, as well as all civil acts registered in the territory of the Russian Federation. The Register should be operated by the federal tax service, which, among other state authorities, would be able to request information from the Register.

According to the changes, relevant information should be submitted starting from 1 January 2018. The amendments do not clarify whether it is necessary to submit information about such acts registered before 1 January 2018 and do not establish any liability for the failure to submit such information. However, we cannot exclude the possibility that such liability will be established by adoption of additional legal acts in future.

In Russia, services connected with wealth management are generally provided by legal entities and banks. In accordance with the existing anti-money laundering rules, service providers are obliged to perform know-your-customer procedures, including obtaining the information on the ultimate beneficiaries where the client is a legal entity.

The definition of a beneficial owner was introduced in Russian legislation in 2013 for the first time ever. The law defines the beneficial owner as an individual who directly or indirectly (with assistance of third parties) holds more than 25 per cent of assets of a client or has the option to control its actions.

According to new changes in the federal Law on Countering Money Laundering and Terrorism Financing, legal entities (with some minor exceptions) have to take all possible measures to identify their beneficiary owners. To do so, a legal entity has a right to request information from its founders, participants and controlling entities or persons, and such entities or persons are obliged to provide all necessary information. Such information should be stored and updated at least annually. Non-compliance with this requirement leads to the risk of administrative liability of a legal entity in the form of a fine of up to 500,000 roubles.

8 Article 19.8 (3) of the Russian Code of Administrative Offences.

9 Article 330 (2) of the Russian Criminal Code.

In addition, financial organisations[10] have to take all possible and reasonable measures to identify the beneficial owner of a client.

Where the beneficial owner is not identified, the client's chief executive officer may be recognised as the beneficial owner.

Also, banks, law firms and some other organisations are obliged to report to the Russian Federal Financial Monitoring Service on certain transactions or finance operations concluded or made by the client if such transactions or operations fall under thresholds established by law.

V CONCLUSIONS & OUTLOOK

In summary, it is necessary to say that wealth is always accompanied by many responsibilities, such as the obligations to manage complicated local and international assets, invest wisely and protect families. The area of Russian private wealth is one of the fastest growing in the world.

Despite the established practice of using foreign instruments, Russians show a tendency to use Russian instruments in their cross-border estate planning. However, the practice of using the Russian instruments is not completely formed and the only future will show how recent legislative initiatives are of effectiveness and attractiveness for the private clients.

Also, it shall be noted that the general tendency in the latest legislative amendments is the increase of state control. An integral part of this process is the tightening of currency and tax regulation.

Russia is not trying to reinvent the wheel; on the contrary, where prospective measures are successfully implemented in other jurisdictions around the world, the foreign experience of these rules is analysed by Russian governmental experts drafting new laws. Hence, foreign investors will mostly see rules that they are already familiar with from their experience of sophisticated jurisdictions, such as the EU countries or the United States.

However, latest changes to Russian tax law will inevitably affect artificial structures whereby 'letter box' companies located in jurisdictions with favourable tax regimes are used, without sound business purpose, only to obtain tax benefits. At the same time, robust structures are unlikely to be affected if they are used by foreign companies that have proper substance, genuine business purpose and are managed from the jurisdiction of their residence.

In light of these changes, new structures should be developed carefully. Moreover, existing structures should be reviewed as soon as possible to determine whether reorganisation is necessary to minimise the possible negative effects of the anticipated measures on information exchange.

Thus, Russian law and practice is changing and is moving in a direction with global trends – restraining the aggressive use or abuse of tax benefits stated in DTTs and increasing global transparency and tax control – and as a result, it is expected that Russia will accede the OECD Base Erosion and Profit Shifting plan.

10 Credit institutions, professional participants in the securities market; insurance and leasing companies; the federal mail organisation; management companies of investment funds and private pension funds; operators of payments collection; companies providing intermediary services in buy or sell deals of real property.

Appendix 1

ABOUT THE AUTHORS

MAXIM ALEKSEYEV

ALRUD Law Firm

Maxim Alekseyev is a co-founder and senior partner of ALRUD Law Firm and head of ALRUD Law Firm private client and tax practices. He is an expert in foreign economic and business activity, investments, corporate and commercial issues.

He graduated from the Moscow State Institute of International Relations of the Ministry of Foreign Affairs of the Russian Federation.

Maxim Alekseyev leads projects dealing both with Russian and foreign partners within the territory of Russia and abroad. In his private client practice, Maxim has extensive experience in advising HNWIs on various types of issues to help them manage and secure their assets, business and family relations. He advises clients on different aspects of estate planning and administration, personal wealth management, as well as family business governance, and risk management in respect of assets protection. Maxim is acknowledged as a leading Russian expert focusing on private wealth planning, succession, onshore and offshore structures, private banking and individual taxation.

Maxim Alekseyev is a member of the International Bar Association (IBA), the American Bar Association (ABA), the Inter-Pacific Bar Association (IPBA) and the Society of Trust and Estate Practitioners (STEP) – a professional body joining the world's most prominent experts specialised in the management of personal finance.

KIRA EGOROVA

ALRUD Law Firm

Kira Egorova is of counsel and head of the international accounting and corporate support department at ALRUD Law Firm. Her principal area of practice is private client law.

She graduated from the Moscow State University department of economics with a degree in economic cybernetics.

Kira Egorova advises private clients, families with dynastic wealth and family offices, as well as their counsels. Her clients also include corporate executives, business owners (and former business owners who have experienced a liquidity event), professionals, fund

managers, private foundations and others. She counsels clients in connection with the significant number of projects involving purchase of luxury items and other property. Kira has extensive experience in advising the Russian HNWIs on development of ownership and succession structure for diversified private and business assets, located in different jurisdictions. Kira leads projects of negotiations and conclusion of shareholder agreements and associated matters.

Kira is a regular contributor of articles to publications and a frequent lecturer at conferences and seminars on current legal issues within her areas of practice.

Kira Egorova is a member of Society of Trust and Estate Practitioners (STEP) and the International Bar Association (IBA).

ELENA NOVIKOVA

ALRUD Law Firm

Elena Novikova is of counsel at ALRUD Law Firm. Her principal areas of practice are: general tax planning, tax advice for corporate restructuring, accounting consulting, taxation of individuals, tax expertise of business transactions and incentive plans.

She graduated from the Moscow State Academy of Business Administration, specialising in financial management and accounting. In 2005 she successfully secured a qualification in international standards of financial statements – ACCA DipIFR. She has been an ACCA member since 2012.

Elena possesses profound experience in accounting, corporate taxation and international taxation, management accounting and communication with the Russian tax authorities. She provides ALRUD clients with advice on a diverse range of complicated tax issues, supports them during tax audits, represents clients' interests in negotiations with state authorities, participates in performing tax due diligences and tax audits.

Elena, together with the ALRUD tax team, provides ongoing tax support for JVC, Tupperware and Moody's Investors Service with regard to their operating in Russia and the CIS. She performs tax expertise of the incentive plans, secondment and other employment issues for ALRUD clients.

EKATERINA VASINA

ALRUD Law Firm

Ekaterina Vasina is an associate at ALRUD Law Firm. Her principal areas of practice are: private clients, mergers and acquisitions, civil, corporate and antitrust law; commercial and civil deals, and arbitration procedures.

She graduated with an honours degree from the law department of the Lipetsk State Technical University, with a specialisation in civil law.

During her studies at university, Ekaterina worked as an attorney for a Russian consulting company. She joined ALRUD Law Firm in 2008.

During her work, Ekaterina has been involved in projects related to the structuring of assets (both Russian and foreign) owned by wealthy families for the purpose of protecting assets against claims of third parties, estate planning and other purposes; participated in the preparation of opinions and comments on various issues of family and inheritance law, including, when relations include the foreign element; has been involved in projects related to trusts and foundations establishment for Russian HNWIs; and has drafted wills and marriage contracts.

Ekaterina also advises clients on corporate law, accompanies M&A projects and projects related to corporate restructuring and reorganisation.

Ekaterina is a member of the International Bar Association (IBA).

ALRUD LAW FIRM
17 Skakovaya Street
Building 2, 6th Floor
125040 Moscow
Russia
Tel: +7 495 234 9692
Fax: +7 495 956 3718
kegorova@alrud.com
evasina@alrud.com
malekseyev@alrud.com
enovikova@alrud.com
info@alrud.com
www.alrud.com