

Wind of Change: confirmation of non-resident status

Russian legislation provides for a simple procedure for determining tax residency: if a person spends more than 183 days during year outside the Russian Federation, such a person is recognized as a non-resident for tax purposes in the Russian Federation and acquires a special status in terms of currency control legislation.

For many years, verifying the actual tax/currency status of a Russian citizen has not been a very common practice for the Russian tax authorities. Even if the verification was occasionally carried out, it was limited to checking copies of a travelling passport and counting the days spent in/outside Russia according to the border crossing stamps in such passport.

Now the situation has changed. The tax authorities have become more interested in checking tax/currency status, especially of those individuals that declare themselves as nonresidents in Russia, actively request confirmations and have turned the process of justifying the tax and currency control status into a challenge.

Official position

According to regulators and courts, the stamp on border crossing does not confirm the physical location outside the Russian Federation.

In particular, controlling authorities assume that:

- Pages of travelling passports do not confirm the fact of crossing the border of Russia with states whose entry does not require a traveling passport, or with states with which border control is not preformed;
- Stamps on crossing the border of Russia in travelling passports cannot unambiguously indicate entry into and exit from Russia, since currently such stamps may not be present in case of crossing the border via automated passport control system operating without the direct participation of officials of the border service.

Hence, individuals are required to confirm not only the fact of departure from the territory of Russia, but also the fact of living outside the Russian Federation.

What does status affect and what are the risks



Taxable income and applicable tax rates

Risk:

Liability for non-payment of tax on income received outside Russia



CFC reporting

Risk:

Request for filing CFC notification and CFC financial statements, fines for non-compliance from RUB 500 000



Currency control limitations

Risk:

Loss of special status and fines for violation of currency control regulations (20-40% of the transaction amount)



Personal reporting obligations

Risk:

Fines for failure to submit documents

How not to miss a request from the tax authorities



Trusted person

Who regularly checks the mailbox at the registration address and has the right to receive correspondence at the post office



Access to the taxpayer's online personal account

Not all correspondence is sent by the tax authorities via online personal account

Points to keep in mind



Limited time to response

Usually - 10 business days. So, the sooner the request is processed, the more time there is to develop a strategy and prepare documents



Complexity of the case

The more actively you travel around the world, the more time it will take to collect necessary set of documents



Translation of documents

If the requested documents are executed in a foreign language, translation into Russian will be required

What will help to prove residence outside Russia

Keep a record of border crossings

Thoroughly record border crossings and choose stamps in your passport instead of an automated pass system. Keep copies of reservations, boarding passes, and migration documents



Be ready to confirm your actual place of residence

Keep reservation confirmations, invoices and receipts in case of living at a hotel as well as property lease or purchase agreements



Everyday life

Employment contract, Internet and utility bills, fitness membership, slips and receipts for the goods and services bought outside Russia



Be prepared to prove your legal status in a foreign country

Residential visa, residence permit, citizenship



Obtain tax residency certificate

In the country where you mainly live or fulfill the conditions for recognition as a tax resident



Fulfill obligations of tax residents

If applicable, in the country where you are a tax resident, for example, file a tax return



Financial activity is a "locator" of presence

Account transactions may reveal your actual location

Involve an experienced tax consultant who will:

- Consider life and business strategy
- Perform analysis of routes and travels in correspondence with actual data
- Audit the available documents
- Select proper confirmations justifying the status for the purposes of currency control or taxation

Contacts



Maxim Alekseyev
Senior Partner
malekseyev@alrud.com



Elena Novikova
Of Counsel
enovikova@alrud.com



Elena Skoptsova
Senior Associate
eskoptsova@alrud.com

We hope that the information provided herein will be useful for you.

If any of your colleagues would also like to receive our newsletters, please send them the [link](#) to complete a Subscription Form.

If you would like to learn more about our [Tax](#) practice, please let us know by replying to this email. We will be glad to provide you with our materials.