

Private Client

In 17 jurisdictions worldwide

Contributing editors

Anthony Thompson and Nicole Aubin-Parvu



2015

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Private Client 2015

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ALRUD

Tax

1 How does an individual become taxable in your jurisdiction?

An individual may be taxable in Russia with regard to his or her income or property (real estate and vehicles).

Russia taxes worldwide income of its tax residents (individuals who stayed in Russia for no less than 183 calendar days within 12 consecutive months) and Russian-sourced income of tax non-residents.

Individuals are subject to transport tax pertaining to vehicles owned by them and registered in Russia.

Personal property tax is paid by owners from the inventory value of real estate registered in Russia.

2 What, if any, taxes apply to an individual's income?

Income is subject to personal income tax (PIT).

Individual tax residents should pay a rate of 13 per cent (general rate) on all income received worldwide (salaries, other remunerations, sale of property, etc). A special rate of 9 per cent is provided for dividend income.

Non-residents pay PIT at a 30 per cent rate and at a 15 per cent rate for dividends.

The 35 per cent rate applies to special types of income received both by residents and non-residents:

- interest on bank deposits exceeding certain limits;
- interest incurred on a rate lower than the threshold rate;
- prizes and winnings received within promotional campaigns for goods, works or services where the respective income exceeds 4,000 roubles; and
- some others.

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

Russia applies a pay-as-you-earn system (ie, organisations paying income to taxpayers should calculate, withhold and remit the relevant amount of tax to the tax authority).

If an individual becomes a tax resident within a calendar year, the tax previously withheld at 30 per cent during this year may be refunded to the taxpayer upon his or her application.

3 What, if any, taxes apply to an individual's capital gains?

Individual's capital gains are subject to PIT as a general income. The tax rate depends on the tax residency status (13 per cent or 30 per cent).

However, capital gains of residents are tax exempt if the sold property (including real estate) was owned for no less than three years. If this threshold was not reached, the resident may decrease the income derived from the sale of property for relevant expenses.

4 What, if any, taxes apply if an individual makes lifetime gifts?

Gifts in monetary form 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.

5 What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

Inheritance tax is not provided as an independent tax and is levied as a part of PIT. It is tax-exempt except for royalties, which are taxed as general income.

6 What, if any, taxes apply to an individual's real property?

An individual's real property is subject to a personal property tax levied based on the inventory value of the real estate, which is usually significantly lower than the market value. The applicable tax rate depends on the municipal unit and may vary.

7 What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to and from your jurisdiction?

Russia, Belarus and Kazakhstan have formed a customs union with no customs control on the borders. Therefore, once imported into one of the countries, goods may be moved within the territory of Russia, Belarus and Kazakhstan without customs formalities.

The import of goods for personal use by an individual may be liable to customs duties and VAT.

Generally, imports of up to 50kg of goods for personal use is exempt from customs duties and VAT provided that the customs value does not exceed the equivalent of €10,000 for goods imported by air and €1,500 for goods imported by other types of transport. Special rules are applicable to certain categories of goods.

If an individual exports goods he or she may be subject to customs duties with respect to certain items (eg, natural diamonds, precious metals with a customs value of more than US\$25,000, etc).

8 What, if any, other taxes may be particularly relevant to an individual?

Most transactions in Russia are considered as taxable for VAT purposes. Hence, individuals have to bear the burden of VAT (10 or 18 per cent) as end consumers of goods, works and services.

9 What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Russian legislation does not recognise trusts. However, trusts may be established by Russian individuals and are usually used for the purposes of succession and protection of capital.

The transfer of assets to trusts is not regarded as a taxable event. Income and capital received from trusts are subject to 13 per cent personal income tax.

10 How are charities taxed in your jurisdiction?

Individuals can get special tax deductions (social deductions) for certain types of costs associated with charities. The charity amount can be deducted only in cases when the donation is transferred for specific purposes. The deduction cannot be more than 25 per cent of total taxable income.

Charity income is generally exempt for the recipient.

Trusts and foundations

11 Does your jurisdiction recognise trusts?

As mentioned in question 9, Russian legislation does not recognise trusts at present. So the assets (moveable or immovable) located or registered in Russia cannot be transferred to the trust directly, but only via foreign instruments. However, Russian citizens may establish a trust under foreign law and also be the settlor and beneficiary of the trusts established under foreign law.

12 Does your jurisdiction recognise private foundations?

Russian legislation allows for funds, which are non-commercial organisations having cultural, educational or other social useful purposes and that cannot be used for solving the managing and inheritance issues of individuals. Russian legislation, therefore, does not have the concept of private foundations as described in European countries and everything mentioned in question 11 in respect of the trusts is also applicable to private foundations.

Same-sex marriages and civil unions

13 Does your jurisdiction have any form of legally recognised same-sex relationship?

In Russia, same-sex person marriage is not allowed. Cohabitation of same sex persons has no legal sense.

14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

In Russia, only an officially registered marriage will have legal consequences for the spouses. From the point of view of Russian family law, cohabitation has no legal sense.

Succession

15 What property constitutes an individual's estate for succession purposes?

In Russia, an individual estate for succession is considered as a complex system of rights and duties and consists of all possessions, property rights, obligations and other assets owned by the testator at the day of the death of the testator. The same rules apply to the assets in joint shared property (shares in the authorised capital of companies, land plots, etc).

Rights and duties that are closely connected with the testator (right to alimony, compensation for personal injury) and personal non-property rights and other intangible benefits are not included in the estate.

A testator's spouse is entitled to a share with regard to the joint property of him or her and the testator (under the general rule of half of the joint property). This half of the joint property is not included in the inheritance and belongs to the surviving spouse. Another half is included in the estate and shall be divided between the heirs (including the surviving spouse). This rule applies even if a will provides otherwise.

Inheritance of real estate is defined in accordance with the rules of the country where such real estate is located and inheritance of real estate registered with the state register of the Russian Federation in accordance with Russian law. Inheritance of moveable property is defined in accordance with the law of the country of the last residence of the testator.

16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

The freedom of disposition of individuals is limited in the following cases:

- an individual is not entitled to dispose of his or her share in joint shared property without notifying the other owners of that property, as they have a pre-emptive right to acquire his or her share;
- an individual is not entitled to dispose of his or her share owned in companies of particular legal forms without notifying the other shareholders of the company as they have pre-emptive rights to acquire his or her share. Also, there may be a requirement to obtain the consent of the other participants of the company in order to dispose of the share;
- an individual is entitled to dispose of any joint property (including marital property) only if all owners of that joint property agree with such a disposition; and
- if an individual fails to perform law requirements concerning the maintenance of property, he or she is not entitled to own some types of property or if this property is taken out for state or municipal needs then he or she can be forced to dispose of the property.

Russian law does not contain any rules relating to the clawback of gifts on death. But the transactions concluded by the testator during his or her lifetime may be disputed by the heirs in the court after the death of the testator if the testator was incapable during concluding these transactions or they were concluded in contempt of the law rules.

17 To what extent do individuals have freedom of disposition over their estate on death?

Testamentary freedom according to Russian law means that first, any property existing at the moment of the death of a person (both within Russia and abroad) may be bequeathed and second, the property of the person may be bequeathed to anyone in any shares.

Testamentary freedom is restricted by compulsory shares for minor or disabled children, a disabled spouse or parents and any dependants of the decedent. Compulsory share means that these persons inherit, irrespective of the contents of the will, at least half of the share each of them is entitled to in the case of succession by the operation of the law. The freedom of disposition is also restricted by the share of the surviving spouse who is entitled to at least half of the joint property.

18 If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

In the event of succession by the operation of law (intestacy), the lawful heirs shall be called upon to inherit in compliance with the priority ranking. There are seven levels of successors. The heirs in each following level inherit the estate if there are no heirs of other prior levels. The shares of all heirs in the respective level shall be equal.

The order of succession of the escheat property of the person who had their last place of residence in Russia prior to their death prescribes that the state shall inherit all the moveable property of the decedent irrespective of its location and the immovable property situated in the territory of Russia.

19 In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

In the event of succession in the absence of a valid will, an adopted child and his or her descendants on one side and the adopter and his or her relatives on the other side are qualified as relatives by origin (blood relatives). Children whose parents are limited in parental rights are also entitled to inherit the estate of these parents.

Illegitimate children are entitled to inherit estates if their descent from the testator is duly established by the registry office or court.

20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

Under Russian law, distribution of an individual's estate and other succession relationships are governed by the law of the country where a testator had his or her last place of residence. The distribution of immovable property is governed by the law of the country where the property is located. If immovable property is recorded in a state register in Russia its distribution shall be governed by Russian law.

The capacity of a person to make a will or revoke it and the form of a will or will revocation act shall be governed by the law of the country where the testator had place of residence when making such a will or act.

21 What formalities are required for an individual to make a valid will in your jurisdiction?

To make a valid will in Russia an individual must be fully capable and sign a will in person.

The will shall correspond to the following requirements:

- it shall be made in writing and certified by the notary (or other authorised persons);
- it shall contain the instructions in the event of death made by only one person;
- a closed will shall be signed by the testator and transferred to the notary in the presence of two witnesses; and
- the will shall bear an indication of the place and date of its certification.

22 Are foreign wills recognised in your jurisdiction and how is this achieved?

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. Foreign wills made in accordance with Russian legal provisions shall also be recognised as valid in Russia.

23 Who has the right to administer an estate?

In Russia, the following persons are entitled to administer an estate:

- the executor of a will (a person, irrespective of being an heir or not, appointed by the testator to administer an estate. Powers of the executor are restricted by the law and are based on the will and terminate when heirs acquire the estate); and
- the notary.

If the estate consists of an enterprise, a share in the authorised capital of a company, securities, etc, then a notary or executor shall conclude a fiduciary agreement and a trustee (a sole proprietor or an organisation appointed by the notary or the executor of the will to act according to an agreement in favour of themselves and the estate) shall administer the estate.

24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

The deceased's assets pass to the heirs and successors only if they accept such assets. To accept the inheritance the heirs and successors must file an application to the notary at the place of commencement of succession within six months from the death of the deceased or make actual actions evidencing the acceptance of the assets (ie, take possession or management of the assets, take measures in order to save the assets, pay for the debts of the deceased, etc).

Upon expiration of a six-month-period from the death of the testator, the notary shall issue a certificate of succession rights to those heirs and successors that accept the assets of the deceased. After the issuance of this certificate the heirs and successors are considered to own the assets from the date of the testator's death irrespective of the date of its factual acceptance or the state registration of rights.

Administrative measures to protect the estate (ie, collecting money or other assets payable to the testator, etc) shall be taken, but the authority of the manager of the estate, notary, executor of the will is limited by law and shall only be valid until the estate passes to the heirs.

25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Disappointed heirs are entitled to file a claim against an estate. To dispute a will they must file a claim to the court of general jurisdiction where the succession was commenced and prove one of the following circumstances:

- the will was made in an improper way;
- the testator was incapable or unable to understand the consequences of his or her acts and control them when making a will;
- the will was made under deception, force or threat; or
- the will violates the right of these persons to compulsory share in the inheritance.

Capacity and power of attorney

26 What are the rules for holding and managing the property of a minor in your jurisdiction?

Under Russian law there are three aspects of the ownership right (possession, use and disposition). A minor can possess and use the property, but the right to dispose of the property on his or her own is restricted until the attainment of majority or emancipation. Until the child reaches the age of 14, his or her property is managed and disposed of by his or her parents, adoptive parents or foster parents (statutory representatives), except for petty daily transactions, transactions related to the obtaining of profit on a royalty-free basis or disposal of the funds received from the statutory representatives that can be performed by a child under 14 years without any restrictions. Minors between 14 and 18 years are entitled to personally enter into deals provided they have duly obtained a prior written consent or ratification of their statutory representatives, except for certain deals stipulated in the law such as disposing of salaries, educational grants,

performing petty daily transactions, deposits to credit institutions and the disposition of same, and the performing of intellectual property rights.

Liability for children up to 14 years has to be carried out by their statutory representatives, and minors between 14 and 18 years are responsible for deals performed by themselves.

Statutory representatives are entitled to manage the minor's property but only in the interests of the minors themselves. Transactions with the minor's property should be under the control of the tutorship and guardianship authority.

27 At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

In accordance with Russian legislation, an individual has legal capacity to hold and use a property at any age, but the right to manage the property depends on a person's age (see question 26). At the same time a minor over 16 years of age may be considered as fully legally capable in the event of:

- emancipation if he or she is working under a labour agreement or performing a business activity. The decision of the tutorship and guardianship authority as well as the consent of any statutory representatives (parents, adoptive parents, foster parents) or a court decision is required; or
- marriage under special consent of the local municipal authority. The laws of the regions of the Russian Federation may stipulate the cases in which marriage under the age of 16 is possible.

28 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

Under Russian law there are three events that require the management of assets on behalf of the person:

- full legal incapacity due to a mental disorders – this requires tutorship established under a court decision. The property shall be managed by the guardian or tutor;
- limited incapacity in the case of alcohol abuse or drug addiction – this requires an establishment of guardianship by the court. The person is entitled to perform petty transactions, while other dealings are subject to the consent of the guardian; and
- the state of health of a capable person of majority age – wardship (patronage) may be established by the tutorship and guardianship authority. The dealings shall be performed on behalf of the person under a commission agreement or a fiduciary agreement or other agreement.

Immigration

29 Do foreign nationals require a visa to visit your jurisdiction?

In most cases foreign nationals require a visa to enter Russia. Types of visas are different and depend on the purposes of a foreign national's trip (eg, tourist, business, education, private and transit). Russian visas are issued by Russian consulates in foreign countries upon an application and the presentation of a set of necessary documents. The documents and the procedure for issuing a visa depend on its type.

Citizens of a number of former USSR states do not need a visa to enter Russia but their period of stay in Russia shall not exceed 90 consecutive days within each 180 days. Citizens of a number of other countries (eg, Argentina, Chile, Colombia, Israel, etc), which have bilateral treaties with Russia, do not need a visa to enter Russia (tourism purposes, etc), but normally if their period of stay in Russia exceeds a certain limit (usually 90 days), a visa will be required.

30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

The period of stay in Russia of a foreign national depends on his or her type of visa.

For example, a tourist visa is valid for up to 30 days while a business visa may be valid for a period from 30 days for up to one year. Business visas may be single, double or multiple entry. Under a multiple entry visa the period of stay in Russia of a foreign national must not exceed 90 consecutive days within each 180 days.

Work visas issued to foreign nationals who have work permits issued under the standard procedure are usually valid for up to one year, work visas for foreign nationals who have work permits of highly qualified

Update and trends

In line with global trends, the Russian government has developed anti-offshore legislation. More specifically, controlled foreign companies (CFC) rules may be effective starting in 2015. The rules would allow taxation of undistributed profits of CFCs (including trusts and foundations) in the hands of Russian tax residents that control foreign companies or non-corporate structures.

It appears that Russian immigration regulation is on the way to liberalisation towards those who are capable to invest his or her assets and knowledge and skills in Russian economy. Demonstrative examples in this regard are the implementation of the 'citizenship-by-investment' programme aiming to encourage high net worth individuals to invest in the Russian economy, as well as the introduction of a simplified regime for senior managers and key personnel assigned by commercial organisations incorporated in WTO member states. However, adopted legislative measures are not on a large scale and need to be monitored and extended in the future.

Important changes in the status of the persons having foreign citizenship along with Russian citizenship came into force on 4 August 2014. In accordance with the new provisions of the Law on Citizenship of the Russian Federation, a citizen of the Russian Federation is obliged to inform the state authorities of the Russian Federation about the fact that he or she has:

- other citizenship;
- a residence permit; or
- another valid document confirming the right of permanent residence in a foreign country.

However, Russian citizens having other citizenship or a residence permit or some other document mentioned above, but permanently residing abroad, are released from the obligation to notify on other citizenship. Russian legislation does not clarify the notion 'permanently residing abroad'. However, as follows from official statements of the Russian migration authorities, a person will be considered to be permanently living abroad and, thus, not having the obligation to notify the state authorities if he or she:

- cancelled his or her registration at his or her place of residence in Russia;
- obtained permanent residence in a foreign country (which must be certified by respective confirmation documents issued abroad); or
- was actually permanently residing abroad and can prove this fact by documentation (eg, by a document from the local authorities in the respective foreign country, utility bills or other documents) registered with a Russian Federation consulate in the foreign country.

Provided the above-mentioned conditions are met, a Russian citizen does not have an obligation to notify the Russian state authorities on other citizenship.

The general date for filing the notification is 4 October 2014. If for some reason the person cannot file the notification (because he or she is abroad), he or she can file the notification during his or her next initial visit to Russia. For those persons who currently do not have other citizenship but will obtain it after 4 August 2014, the term for notification is 60 days upon acquisition of other citizenship.

The amendments establish administrative and criminal liability for breach of the notification procedure or failure to file the notification.

specialists may be issued for a period of up to three years. The period of stay in Russia under such visas is limited only by the visa's terms.

Education visas are usually issued for the term of study but not for more than one year.

Visas for family members accompanying a foreign national who has a work permit and a work visa are usually issued for the period of the visa of a foreign national who has a work permit.

31 Is there a visa programme targeted specifically at high net worth individuals?

Generally, visa rules apply to all foreign nationals irrespective of their origin and social status.

The only special visa programme that has been established is for foreign nationals who come to work in Russia as highly qualified specialists. A foreign national may be hired as a highly qualified specialist if he or she has experience, skills and the necessary degree of education in the industry where he or she intends to be employed. The employee itself assesses the level of experience, skills and education of such a foreign national and bears all relevant risks. Generally, the salary of such a foreign national must be at least 2 million roubles gross per annum, however, there are some simplified criteria for recognition of employees of certain spheres as a highly qualified specialists, for example, such simplified criteria apply to foreign nationals employed at the Skolkovo Innovation Centre, foreign nationals employed by certain companies conducting business activity in the IT sphere, foreign nationals employed as scientific workers and lecturers of Russian institutions of higher education, as well as some other categories.

Highly qualified foreign nationals who arrive in Russia with the purpose of securing employment may be granted a business visa for a term of up to 30 days in order to attend interviews and find a job.

Like other foreign nationals who come to work in Russia, a highly qualified specialist needs a work permit and a work visa. A work permit may be issued to him or her for a period of up to three years (while for other foreign nationals it is issued for a period of up to one year). The procedure for hiring a highly qualified specialist is simpler than that established for hiring other foreign nationals.

Some additional obligations are imposed on employers when hiring foreign nationals as highly qualified specialists.

Apart from the preferential treatment of highly qualified specialists there is a fairly similar migration regime for foreign nationals assigned by foreign commercial organisations registered in one of the World Trade Organization (WTO) member states to the subsidiaries as well as branches or representative offices of such commercial organisations in Russia. This

regime has been introduced in migration legislation due to Russian accession to the WTO. Its beneficiaries can be the foreign nationals assigned to hold senior management positions or assigned as 'key personnel'. Similar to highly qualified specialists, the term of visa for this category of foreign employees is also determined by the term of work permit that can be issued for a period of up to three years. Some additional obligations are also imposed on employers when hiring foreign nationals assigned by foreign commercial organisations registered in one of the WTO member states.

32 If so, does this programme entitle individuals to bring their family members with them? Give details.

A foreign national who is hired as a highly qualified specialist is entitled to bring his or her family members to Russia. Family members are spouses (partners are not considered family members in terms of Russian law), children (including adopted ones), spouses of children, parents (including adoptive ones), grandfathers, grandmothers and grandchildren.

Visas for the highly qualified specialist's family members are issued for the period of his or her work permit (ie, for up to three years). Under this visa they are entitled to work in Russia (provided they have a work permit) as well as to study or perform another activity.

An employer that hires a highly qualified specialist must provide him or her and any family members with a voluntary medical insurance policy for the whole period of their stay in Russia.

There are no migration preferences for family members of foreign nationals assigned by foreign commercial organisations registered in one of the WTO member states or the subsidiaries as well as branches or representative offices of such commercial organisations in Russia.

33 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

A highly qualified specialist and his or her family members may apply for a residence permit for the term of the work permit. The procedure for obtaining a residence permit for them is simplified since they are not allowed not to obtain a temporary residence permit as a preliminary step before obtaining a residence permit.

In order to apply for a residence permit, a highly qualified specialist should present an application and a set of necessary documents to the Russian migration authorities.

A residence permit of a highly qualified specialist and his or her family members may be extended following the extension of a work permit for a highly qualified specialist.

34 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

Strictly speaking, a highly qualified specialist and his or her family members may apply for Russian citizenship under the general rules (ie, after five years of continuous domicile in Russia under a residence permit) unless there are other specific grounds, such as marriage to a Russian national, birth in the USSR, outstanding achievements before the state (Russia) or some other grounds. The same rule applies to foreign nationals assigned to work in Russia by commercial organisations registered in one of the WTO member states.

At the same time, quite recently, simplified procedures for obtaining of Russian citizenship for certain categories of foreign nationals have been implemented in Russia, for example:

- foreign nationals who have acquired professional education in accredited state institutions in Russia after 1 July 2002 and have been working in the territory of Russia for not less than three years;
- foreign investors, namely, those having 10 per cent stake in Russian legal entities, provided that the authorised capital and net assets of such an entity amounts to 100 million roubles or the amount of payments made by such entity to Russian budget and state social funds is not less than 6 million roubles per year;

- individual entrepreneurs performing activities in the territory of Russia for a period of not less than three years preceding the year of application to the citizenship with a total minimum turnover of 10 million roubles gained in one of the economic sectors specified by the Russian government;
- foreign employees who have been working in the territory of Russia for not less than three years, provided they have been occupying one of the positions specified by the competent state authority. Up to now the list of such positions is still not approved; and
- foreign nationals legally residing in Russia and being recognised as Russian native speakers.

The above categories may obtain Russian citizenship without fulfilment of the rule on five years domiciled in Russia under a residence permit.

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