The Private Wealth & Private Client Review

Fourth Edition

Editor
John Riches

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EDITOR'S PREFACE

There is no doubt that the twin recurring themes for 2015 at a global level in private wealth planning are those of transparency and regulation. The zeal of policy makers in imposing ever more complex and potentially confusing sets of rules on disclosure of beneficial ownership information seems unabated.

i Common reporting standard (CRS)

The centrepiece of cross-border automatic information exchange is CRS. This FATCA equivalent for the rest of the developed world is set to come into effect from 1 January 2016. At the last count just over 90 countries had committed to CRS. Its principal effects will be felt in two waves – among the so-called early adopters group the rules will take effect from 1 January 2016 and first information exchanges will apply in September 2017. For the second wave, there will be a year's delay.

What is interesting about CRS is that the OECD has taken a central role in producing coordinated guidance on its interpretation. The draft guidance initially published in July 2014 was somewhat sketchy in nature and we can expect, as we move towards the beginning of next year, revised and more detailed guidance on a number of key issues.

Deep concerns exist about the extent to which information exchange between tax authorities under CRS will remain secure in the hands of the 'home' countries of beneficial owners. While the 'normal' way of signing up to CRS is via the multilateral convention that provides for exchange with other signatory nations, there are indications that some jurisdictions (at this stage the Bahamas, Hong Kong and possibly Switzerland) may seek to adopt a more 'bilateral' approach implementing CRS. If this approach becomes more widespread, then the practical implementation of CRS could be significantly delayed by jurisdictions who negotiate treaties on a one-by-one basis with 90 other countries.

While CRS is often compared to FATCA, there are some material differences that emerge from closer scrutiny. Whatever the shortcomings of FATCA, the ability to issue a global intermediary identification number and to sponsor entities on a cross-

border basis somewhat lessens the bureaucratic excesses of its impact. What is distinctly unclear about CRS at this point is whether equivalent mechanics will emerge. As CRS is currently written as a series of bilateral treaties between jurisdictions with no domestic law 'anchor' (as is the case with FATCA) concerns are being expressed about the potential duplication for complex cross-border structures of reporting. In this context, the July 2014 introduction to CRS notes that the rules as to where a financial institution (FI) will be deemed resident differs between jurisdictions – in some cases this will be based on the place of incorporation whilst in others it may be based on the place of effective management.

There are concerns as to how non-financial entities (NFEs) will be dealt with under CRS. There is anecdotal evidence emerging already in the context of FATCA that financial institutions, driven by concerns about fines from regulators for NFEs and the related ownership structure are subjecting bank account applications for NFEs to additional enquiries that generate very significant costs and delay.

It is noteworthy that there has been a significant crossover from the anti-money laundering (AML) or terrorist financing regime coordinated by the Financial Action Task Force (FATF). This is expressly provided in the CRS model treaty that imports into CRS the FATF concept of beneficial ownership. In the CRS world, this is known as 'controlling persons'. By expressly linking the definition of controlling persons to that of beneficial ownership employed for FATF purposes, there is the prospect of the beneficial ownership definition evolving over time in accordance with principles adopted in that domain. It is noteworthy that, as well as looking to ultimate legal and beneficial ownership of an entity, these definitions also look to the capacity to exert influence and control in the absence of any formal legal entitlement. Thus the expanded definition is as follows.

Beneficial owner refers to the natural person who ultimately owns or controls a customer or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.[1]

It is completely appreciated that, in a law enforcement context, criminals and terrorists do not typically advertise their involvement in ownership structures where they are liable to be detected by the appropriate agencies. Transporting this definition wholesale, however, into the world of tax information exchange where domestic tax authorities may draw unfair and adverse implications from an attribution of being a 'controlling person' is more questionable. It is not a complete response to this concern to say, in the final analysis, if someone has no ability to enjoy the benefit of assets held within a particular structure that they can demonstrate this – the potential costs and bureaucracy of an unwarranted tax audit that may arise from such a misunderstanding will be more difficult to quantify.

Another area of concern is the capacity for banks who have, in the past, misclassified or misunderstood information about ownership structures. If this information is simply

1 http://www.fatf-gafi.org/pages/glossary/a-c/ – The Recommendations were adopted by FATF on 16 February 2012. (emphasis added).

'copied over' from AML records for CRS purposes then there is scope for false and misleading information to be exchanged in circumstances where the 'beneficial owners' may be completely unaware of such mistakes or misclassifications.

What follows from this is an increased importance for professional advisers to actively engage with clients to discuss the implications of these changes. Taken together, the combined impact of these changes is likely to be seen in years to come as a 'paradigm shift' in international wealth structuring. It is therefore critically important that the advisory community equips itself fully to be able to assist in a pro-active manner.

ii Public registers of beneficial ownership

On 20 May 2015, the EU published the final version of its fourth anti-money laundering directive (4AMLD). This commits the EU Member States to providing a public register of beneficial ownership within the next two years. What is noteworthy about the terms of the regulation is the fundamental distinction that has been drawn between ownership information about 'legal persons' (including companies and foundations) on the one hand, and 'legal arrangements' (including trusts) on the other. There is an obligation for information on legal persons to be placed in the public domain while information relating to trusts and equivalent arrangements will be restricted so that it is only made available to competent authorities.

The acceptance in the drafting of these regulations that there is a legitimate distinction to be drawn between commercial entities that interact with third parties, primarily in the context of business arrangements, and private asset ownership structures that are primarily designed to hold wealth for families is an encouraging one.

It should not, however, be assumed that the emphasis on privacy that underpinned this particular distinction will necessarily be a permanent one. There is a very strong constituency within the EU that still argues that a public register of trusts should be introduced at some stage in the future.

Turning to the UK, 2016 will see the introduction of a public register of beneficial ownership for companies in the UK. This legislation, to a large extent, anticipates the impact of 4AMLD although it is not completely symmetrical. The centrepiece of UK domestic legislation is the public identification of persons with influence over UK companies, known as 'persons exercising significant control' (PSCs). There are significant penalties for non-compliance. In particular, in circumstances where a PSC does not respond to the request for information from a company, not only can that refusal generate potentially criminal sanctions, it can also result in any economic benefits deriving from the shares as well as the ability to vote being suspended.

While it is appreciated that there are reasons why sanctions need to be applied to encourage people to comply, the harsh economic penalties may be seen as totally disproportionate to non-compliance. It is interesting to note that the PSC concept analogous to that of the 'controlling persons' in the context of CRS. As with CRS, the most complex area here is the extent to which those being seen to exert 'influence' without formal legal entitlement may be classified as PSCs.

One further interesting issue that needs to be considered as matters move forward is whether the impact of the EU public register for corporate entities will result in a 'back door' trust register in many cases. One of the categories for disclosure of PSCs in

the UK register is 'ownership or influence via a trust'. In circumstances therefore where a trust holds a material interest in a company, this can result in not only the trustees and protectors of the trust, but also family members with important powers (such as hire and fire powers) being classified as PSCs and having their information placed on a public register. While this register will not give direct information about beneficiaries as such, in many cases it will provide a significant degree of transparency about family involvement. It seems likely that, over time, the EU will also look to 'export' a requirement for beneficial ownership information on public registered companies to be incorporated in many of the international finance centres. While IFCs have indicated that they are sceptical about the adoption of such registers in circumstances where there is not a common standard applied to all jurisdictions, it remains to be seen how long this stance can be maintained once 4AMLD is in full force.

iii Position of the United States

The United States stands out as having secured a position for itself in the context of cross-border disclosure that many feel is hypocritical. Specifically there is a carve out from CRS on the basis that the US has implemented FATCA. The constitutional position in the US where measures of this nature would tend to be introduced at a state rather than federal level also complicates the picture. In the absence of any comprehensive regime to regulate trustee and corporate service providers, the US appears to have achieved a competitive advantage in administering 'offshore' structures because it has exempted itself, in practical terms, from reciprocation on automatic information exchange. This is already leading to many considering the US as an alternative base from which to administer family structures in a more 'private' setting than is possible in IFCs once CRS take effect.

iv Global legal entity identifier system (GLEIs)[2]

A development flowing from the 2008 financial crisis is the introduction of GLEIs. In December 2014 a regulatory oversight committee relating to GLEIs introduced a task force to develop a proposal for collecting GLEIs information on the direct and ultimate parents of legal entities. The policy is to ensure financial intermediaries can track who they are dealing with as counterparties in investment transactions. The underlying policy that drives the creation of the GLEIs is to create transparency in financial markets. In the current phase 1 of the project, the information required to be collected is limited to 'business card information' about the entities concerned and will therefore be limited to a name, address and contact number. However, the 'level 2' data that is likely to be required will extend the reference data to relationships between entities. This could result in beneficial ownership information being required in due course. This proposal is likely to see some development in the course of the next six months but is yet another illustration of overlapping regimes for collecting beneficial ownership information that are likely to have a substantial effect on the operation of family wealth holding structures in the years ahead.

2 http://www.leiroc.org/.

v Conclusion

The challenges of keeping abreast of changes in the regulatory and transparency arena are significant. These issues look set to be a significant driver in wealth strategy in the next three to five years. Navigating these issues will increasingly become a required skill set for professional advisers.

John Riches
RMW Law LLP
London
September 2015

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 and safe transferring of wealth through generations. Meanwhile, the issues of asset protection and confidentiality remain the hot topics for high net worth individuals.

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. 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 pay attention to these trends to determine what changes they might need to implement 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 have preferred a high level of self-involvement in asset management and have worked a lot with foreign banks, family offices and investment agencies, and this is reflected in contemporary attitudes. But we see today that in Russia such services have also started to be rendered by private and state banks, and by emerging private wealth management offices.

1 Maxim Alekseyev is a senior partner, Kira Egorova is of counsel, Elena Novikova is a senior associate and Ekaterina Vasina is a senior attorney 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.

However, capital gains of tax residents are tax exempt if the sold property was owned for not less than three years (except for securities). If the holding period is less than three years, the resident may decrease the income derived from the sale of the property by the relevant expenses (allowances).

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 will be 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).

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 will last 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 'Deoffshorisation' of the Russian economy

The Russian government on 30 May 2013, in its Key Guidelines on Russian tax policy for 2014–2016, announced the need for the implementation of rules focused on the taxation of controlled foreign companies (CFCs) with the goal of creating an effective mechanism, which will prevent Russian business 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, many of which became effective from 1 January 2015.

One of the key developments is the adoption of the Deoffshorisation Law[2] introducing new rules which substantially change the way business operates in Russia, affect most of the wealth management and private holding structures and imply an increase of the tax disclosure obligations and tax control over Russian and foreign companies belonging to Russian tax residents or operating in Russia.

The key aspects of the Deoffshorisation Law are outlined below.

'Beneficial ownership' concept

For the purposes of the application of Double Tax Treaties (DTT) the beneficial owner of income is 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.

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.

Also, 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

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, at the end of 2014 the Russian tax authorities started applying 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 Deoffshorisation 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 Deoffshorisation 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.).

The disclosure of indirect participation of individuals or public entities is required, provided their share in a foreign organisation (structures established in any form other than a legal entity) owning immoveable property in Russia exceeds 5 per cent.

'Tax residency' concept

The Deoffshorisation 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.

CFC rules

A CFC is defined as a foreign organisation (or foreign structure established in any form other than a legal entity), which 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 at a rate of 13 per cent (if the controlling person is an individual which is a tax resident in Russia) or at a rate of 20 per cent (if the controlling person is an entity which is a tax resident in Russia).

iii Exchange of information

Besides the 'Deoffshorization law', another important tax initiative was announced in 2014 as the Russian government published 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).

The publication of the Russian Model TIEA is a step towards effective exchange of information with non-treaty jurisdictions and tax transparency.

It is expected that after conclusion of the TIEA with low-tax jurisdictions, the Russian tax authorities will have the right to obtain, on request, information concerning the ultimate or beneficial owners of companies and partnerships, the settlors, trustees and beneficiaries of trusts as well as founders, members of the foundation council and beneficiaries of foundations.

In this regard, Russia ratified the OECD Convention on Mutual Administrative Assistance on Tax Matters, which came into force on 1 July 2015.

iv Restrictions for public officials

On 7 May 2013 the President of Russia signed Federal Law No. 79-FZ[3] setting forth a ban on public officers possessing certain foreign assets.

Starting 1 January 2015 the Federal Law No. 79-FZ was amended and covers a new category of individuals.

From now on, the restrictions, provided by Law No. 79-FZ, are imposed not only for 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, other organisations established by Russia and appointed by the President, government, General Prosecutor, but also for certain employees of the organisations, established by Russia, where those employees are involved in decision making on matters concerning the sovereignty and national security of Russia.

3 Federal Law on prohibiting certain categories of individuals from opening and holding foreign bank accounts (deposits) and keeping cash and valuables in foreign banks, as well as from having or/and using foreign financial instruments of 7 May 2013.

In accordance with the law, public officers, their spouses and children under 18 are not entitled:

a to open and hold a foreign bank account (deposits);
b to keep funds in foreign banks; and
c to hold or use foreign financial instruments.

v Currency regulation: foreign accounts of individuals

The Law on Currency Regulation[4] 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. If a Russian citizen crosses the Russian border, the one-year term for obtaining non-resident status restarts.

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 – report on transfer of funds via their foreign bank accounts (deposits).

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.

Starting from 2 August 2014 the list of funds that may be transferred to a resident's foreign bank account[5] was expanded by the following types of payments: accumulated coupon interest, the payment of which is foreseen by the terms of issue of foreign securities owned by the resident; 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.

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 out of the amount of the illegal currency transaction.

Despite the increase of reporting obligations of Russian residents, it is noteworthy that the Law on Currency Regulation is in a course of liberalisation in recent years. Thus, the draft law on expanding the list of funds which would be allowed to receive on foreign bank accounts was adopted in the first (of three) readings on 18 February 2015.

These amendments are long-awaited and expected to give the opportunity for resident individuals to credit the funds from sale of foreign securities or from trust management, to their accounts opened with foreign banks, and to receive these funds in full compliance with the currency legislation of Russia.

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

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

III SUCCESSION

First, 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.[6] 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. The testator can dispose of his or her property to any persons, determine the shares of the heirs in the inheritance, deprive one, several or all heirs entitled by law of the inheritance, without stating the reasons for such deprival, and in some cases also include other disposals in the will. However, certain mandatory rules of Russian law cannot be changed in any way by a will (forced heirship rules,[7] compulsory share of a spouse with regard to joint property).[8]

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 one 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 already 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, which 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 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 (including the surviving spouse). This rule applies even if a will provides otherwise.

6 Article 1111 of the RF Civil Code.

7 Article 1149 of the RF Civil Code.

8 Article 1150 of the RF Civil Code.

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 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 is currently 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, on May 2015 the Draft of the Law on making amendments to inheritance rules was submitted to the Duma of the Russian Federation.

The Draft of the Law proposed to impose an obligation on the notary to initiate an inheritance case if it had become known to him or her that the person who concluded a testament agreement or issued a testament died. Also the notaries shall assist the heirs in collecting the documents required for accepting the estate.

Also the Draft of the Law introduces the 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. If the will issued after concluding the testament agreement contradicts to the agreement, the will shall be considered valid in the part being in compliance with the testament agreement. 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.

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 allowed.

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 a 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 AND 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 and capital received from trusts and foundations are subject to PIT at the rate of 13 per cent.

When Russian citizens and residents intend to transfer their property to foreign trusts certain useful 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 personal assets 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 the implementation of the recent changes to Russian legislation regarding the status of persons who hold both foreign and Russian citizenship. Relevant amendments have come into force on 4 August 2014.

In accordance with the changes, 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 an authorised representative or via the federal postal service. Failure to perform this duty entails administrative or civil 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 rubles.[9] Failure to provide notification at all entails a criminal liability with one of the following consequences: obligation to pay a fine in the amount up to 200,000 rubles; or a fine in 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 the term of up to 400 hours.[10] Currently there are quite a few administrative cases with regard to the violation of these requirements, since the relevant authorities keep a close eye on their implementation.

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

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 that 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.

Financial organisations[11] 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 RF 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.

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

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

11 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.

V CONCLUSIONS AND OUTLOOK

In summary it is necessary to say that wealth is always accompanied by many responsibilities, such as the obligation 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, anticipated 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 possible changes, new structures should be developed carefully. Moreover, existing structures should be reviewed to determine whether reorganisation is necessary to minimise the possible negative effects of the anticipated measures, especially, due to the following initiatives:

a Russia ratified the OECD Convention on Mutual Administrative Assistance on Tax Matters, which came into force on 1 July 2015;

b the Russian government published a Model Agreement on Exchange of Information on Tax Matters as a basis for the conclusion of bilateral agreements with offshore jurisdictions, which will help to obtain the information concerning the ultimate or beneficial owners of companies and partnerships, the settlors, trustees and beneficiaries of trusts as well as founders, members of the foundation council and beneficiaries of foundations; and

c Russia is expected to sign the Common Reporting Standards (CRS), as the financial information exchange will start in September 2018.

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, as a result it is expected that Russia will accede the OECD Base Erosion and Profit Shifting plan.

Appendix 1

ABOUT THE AUTHORS

MAXIM ALEKSEYEV

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Maxim Alekseyev is a co-founder and senior partner of Alrud Law Firm, 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, on-shore and off-shore 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

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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, 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 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

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Elena Novikova is a senior associate 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 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

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Ekaterina Vasina is a senior attorney 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 as a junior attorney in 2008 and was promoted to the position of senior attorney in May 2011.

During this period she has been involved in due diligence processes in the context of merges and acquisitions (M&A), purchasing of assets and IPO projects (mainly in respect of corporate and commercial issues); prepared documents for FAS approval of M&A transactions; and consulted on civil, corporate and antitrust law. Ekaterina has experience of legal support for commercial deals and M&A projects, and for

other corporate activities. Among Ekaterina's clients are the management of TNK-BP, Moody's, Nibe, Inmarko LLC and many others whom she has successfully advised on the numerous issues arising in relation to her specialisation.

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