Russia prepares a law to fight against off-shore structures

In its report to the State Duma of 23/10/2014, the Government of the Russian Federation has finally supported the newly amended Bill of the Federal Law "On Amendments to Parts One and Two of the Tax Code of the Russian Federation (taxation of the income of controlled foreign companies and profits of the foreign companies") of 26/08/2014.

This piece of legislation aims to prevent the cash-drain from Russia to off-shore places and to struggle against the use of various cross-border tax evasion schemes.

The major aspects of the draft tax legislation are:

- The introduction of the beneficial ownership's concept which limits the use of tax advantages under the Double Tax treaties concluded by the Russian Federation.
- The widening of Thin Capitalization Rules which are now also applicable on loans from related foreign companies.
- Unlimited tax liability of foreign enterprises having a place of effective management in the Russian Federation, unless otherwise stipulated by an international tax treaty
- Introduction of tax rules for Controlled Foreign Companies (CFC) and controlling persons or entities so that undistributed profits of the CFC will be taxed in Russia
    - Large definition of CFCs including all kinds of corporate and non-corporate investment entities or schemes
    - Specific exemptions i.a.
        - for entities residing in a Member State of the Eurasian Economic Union (Russia, Belarus and Kazakhstan)
        - for entities which are resident in a country with an effective tax rate above 15% and have concluded treaties on information exchange
        - for "White List" entities like banks and insurance companies etc.
        - for the structures special exemptions are previewed
    - allocation of profits (if CFC's profit exceeds 10 million Rubles) with the controlling shareholder
        - where a person or entity has a share through a direct or indirect participation (together with related persons) of more than 25% (50% till 1 January 2017);
        - where a Russian tax resident has a share through a direct or indirect participation of more than 10% (together with related persons) and which together with all related shareholders who are tax residents of the Russian Federation exceeds 50%

- “Opt-out” possibility for foreign companies applying to be taxed as a Russian company with unlimited tax liability

- General right of taxation of capital gains from the sale of shares in companies holding more than 50% of Russian real estate

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